



भारत का राजपत्र

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No. 471 NEW DELHI, NOVEMBER 18—NOVEMBER 24, 2012, SATURDAY/KARTIKA 27—AGRAHAYANA 3, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए साविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)
नई दिल्ली, 16 नवम्बर, 2012

का.आ.3440.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकार्ष उपबंध) स्कीम, 1970/1980 के खंड 3 के उपखंड (1) के साथ पठित, बैंककारी, कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, श्रीमती सुधा कृष्णन, संयुक्त सचिव, व्यवस्था विभाग को डॉ. थॉमस मैथू के स्थान पर तत्काल प्रभाव से और अगले आदेश होने तक केनरा बैंक के निदेशक मण्डल में सरकार द्वारा नामित निदेशक के रूप में नामित करती है।

[फा.सं. 6/3/2012-बीओ-I]
विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 16th November, 2012

S.O. 3440.—In exercise of the powers conferred by clause (b) of Sub-section (3) of Section 9 of the Banking

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Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominates Smt. Sudha Krishnan, Joint Secretary, Department of Expenditure, as Government Nominee Director on the Board of Directors of Canara Bank with immediate effect and until further orders vice Dr. Thomas Mathew.

[F.No. 6/3/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 21 नवम्बर, 2012

का.आ.3441.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उप-धारा (4) के साथ पठित उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, डॉ. सुबीर विठल गोकर्ण, डिस्ट्री गवर्नर, भारतीय रिजर्व बैंक को दिनांक 31-12-2012 तक की और अवधि के लिए अथवा नियमित नियुक्ति

किए जाने तक अथवा अगले आदेशों तक, इनमें से जो भी सबसे पहले हो, पुनर्नियुक्त करती है।

[फा.सं. 7/1/2012-बीओ-I]

श्रेया गुहा, निदेशक

New Delhi, the 21st November, 2012

S.O. 3441.—In exercise of the powers conferred by clause (a) of Sub-section (1) read with sub-section (4) of Section 8 of the Reserve Bank of India Act, 1934, the Central Government hereby re-appoints Dr. Subir Vithal Gokarn, Deputy Governor, Reserve Bank of India for a further period till 31-12-2012 or till a regular appointment is made or until further orders, whichever is the earliest.

[F.No. 7/1/2012-BO-I]

SREYA GUHA, Director

पोत परिवहन मंत्रालय

नई दिल्ली, 21 नवम्बर, 2012

का.आ.3442.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित 1987) के नियम 10 के उप-नियम 4 के अनुसरण में पोत परिवहन मंत्रालय, के प्रशासनिक नियंत्रण के अधीन निम्नलिखित कार्यालयों में 80% से अधिक कर्मचारियों द्वारा हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लेने पर उसे एतद्वारा अधिसूचित करती है:—

1. भारतीय अंतर्राष्ट्रीय जलमार्ग प्राधिकरण

द्वितीय तल-52, नदेसर

वाराणसी-221002, उत्तर प्रदेश

2. भारतीय अंतर्राष्ट्रीय जलमार्ग प्राधिकरण,

कार्यालय भवन-1, एफबीपी ऑफिस काम्पलेक्स,

जिला-मुर्शिदाबाद,

फरवका बैराज-742212, पश्चिम बंगाल

[फा.सं. ई-11011/15/2008-हिन्दी]

एम.सी. जौहरी, संयुक्त सचिव

MINISTRY OF SHIPPING

New Delhi, the 21st November, 2012

S.O. 3442.—In pursuance of the sub-rule (4) of the rule 10 the Official Language (use for the official purpose of the Union) Rules, 1976 (as amended), the Central Government hereby notifies the following offices under the administrative control of the Ministry of Shipping, more than 80% of the staff of which have acquired working

knowledge of Hindi:—

1. Inland Waterways Authority of India,

2nd floor, Nadesar, Varanasi-221002,

Uttar Pradesh

2. Inland Waterways Authority of India,

Office Building-1, FBP Office Complex,

Distt.-Murshidabad, Farakka Bairaj-742212,

West Bengal.

[F.No. E-11011/15/2008-Hindi]

M.C. JAUHARI, Jt. Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

नई दिल्ली, 12 जून, 2012

का.आ.3443.—केन्द्र सरकार, दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय दंत चिकित्सा परिषद से परामर्श करने के बाद, एतद्वारा उक्त अधिनियम की अनुसूची के भाग-1 में निम्नलिखित संशोधन करती है, अर्थात्:—

2. दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-1 में क्रम संख्या 105 में निम्नलिखित संख्या और प्रविष्टियां अन्तःस्थापित की जाएंगी, अर्थात्:—

“106 संतोष विश्वविद्यालय, संतोष दंत महाविद्यालय एवं अस्पताल, गाजियाबाद

गाजियाबाद

(i) बैचलर ऑफ डैंटल सर्जरी बीडीएस, संतोष

(यदि 20-10-2011 को अथवा विश्वविद्यालय,

उसके पश्चात् प्रदान की गई हो) गाजियाबाद”

[सं. वी. 12017/13/2003-डी०]

सूबे सिंह, उप सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 12th June, 2012

S.O. 3443.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely:—

2. In Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) after Serial No. 105, the following Serial number and entries shall be inserted, namely:—

“106 Santosh University, Santosh Dental College & Hospital,

Ghaziabad,

Ghaziabad.

(i) Bachelor of BDS, Santosh

Dental Surgery University,
(if granted on or Ghaziabad."
after 20-10-2011)
[No. V. 12017/13/2003-DE]

SUBE SINGH, Dy. Secy.

नई दिल्ली, 29 जून, 2012

का.आ.3444.— केन्द्र सरकार, दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय दंत चिकित्सा परिषद से परामर्श करने के बाद, एतद्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है, अर्थात्:—

2. मनिपाल विश्वविद्यालय, मनिपाल द्वारा प्रदान की जाने वाली दंत डिग्रियों की मान्यता के संबंध में दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में मनिपाल दंत विज्ञान महाविद्यालय, मंगलोर के संबंध में क्रम संख्या 90 के समक्ष कालम 2 एवं 3 की मौजूदा प्रविष्टियों में निम्नलिखित प्रविष्टियां अन्तःस्थापित की जाएंगी:—

“मास्टर ऑफ डैंटल सर्जरी
कन्जर्वेटिव डेन्टिस्ट्री एवं एंडोडेंटिक्स एमडीएस (कन्ज. डेन्ट.), मनिपाल
(यदि 17-4-2012 को अथवा उसके
पश्चात प्रदान की गई हो) विश्वविद्यालय, मनिपाल

पैडोडेंटिक्स एवं प्रीवेन्टिव डेन्टिस्ट्री एमडीएस (पैडो.), मनिपाल
(यदि 17-4-2012 को अथवा उसके
पश्चात प्रदान की गई हो) विश्वविद्यालय, मनिपाल

ओरल एवं मैक्सिलोफेशियल सर्जरी एमडीएस (ओरल सर्जरी), मनिपाल
(यदि 17-4-2012 को अथवा उसके
पश्चात प्रदान की गई हो) विश्वविद्यालय, मनिपाल”

[सं. वी. 12017/20/2008-डीई]

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 29th June, 2012

S.O. 3444.— In exercise of the powers conferred by sub-section (2) of section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely:—

2. In the existing entries of column 2 & 3 against Serial No. 90, in respect of Manipal College of Dental Sciences, Mangalore in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of dental degrees awarded by Manipal University, Manipal, the following entries shall be inserted thereunder:—

“Master of Dental Surgery

Conservative Dentistry & Endodontics MDS (Cons. Dent.),
(if granted on or after 17-04-2012) Manipal University,
Manipal”.

Paedodontics and Preventive Dentistry MDS (Paedo.), Manipal
(if granted on or after 17-04-2012) University, Manipal”.

Oral & Maxillofacial Surgery MDS (Oral Sur.), Manipal
(if granted on or after 17-04-2012) University, Manipal”.

[No. V. 12017/20/2008-DE]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 2 जुलाई, 2012

का.आ.3445.— केन्द्र सरकार, दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय दंत चिकित्सा परिषद से परामर्श करने के बाद, एतद्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है, अर्थात्:—

2. दंत चिकित्सक अधिनियम, 1948 (1948 का 16) के क्रम संख्या 107 के बाद निम्नलिखित क्रम संख्याएं एवं प्रविष्टियां अन्तःस्थापित की जाएंगी, अर्थात्:—

“108 जगतगुरु श्री शिवरत्रेश्वरा विश्वविद्यालय, मैसूर

जैएसएस डैंटल कालेज एवं अस्पताल, मैसूर, कर्नाटक
मास्टर ऑफ डैंटल सर्जरी

प्रोस्थोडेंटिक्स और क्राइन एवं ब्रिज एमडीएस (प्रोस्थो.), जगतगुरु श्री शिवरत्रेश्वरा
(यदि 26-4-2012 को अथवा उसके
पश्चात प्रदान की गई हो)

कन्जर्वेटिव डेन्टिस्ट्री एवं एंडोडेंटिक्स एमडीएस (कन्ज. डेन्टिस्ट्री), जगतगुरु
(यदि 26-4-2012 को अथवा उसके
पश्चात प्रदान की गई हो) श्री शिवरत्रेश्वरा

पैडोडेंटिक्स एवं प्रीवेन्टिव डेन्टिस्ट्री एमडीएस (पैडो.), जगतगुरु श्री शिवरत्रेश्वरा
(यदि 19-4-2012 को अथवा उसके
पश्चात प्रदान की गई हो) विश्वविद्यालय, मैसूर

परियोडोटेलोजी एमडीएस (परियो.), जगतगुरु श्री शिवरत्रेश्वरा
(यदि 21-4-2012 को अथवा उसके
पश्चात प्रदान की गई हो) विश्वविद्यालय, मैसूर

ओरल एवं मैक्सिलोफेशियल सर्जरी एमडीएस (ओरल एवं मैक्स. सर्जरी),
(यदि 19-4-2012 को अथवा उसके
पश्चात प्रदान की गई हो) जगतगुरु श्री शिवरत्रेश्वरा

विश्वविद्यालय, मैसूर

ओर्थोडोन्टिक्स एवं डंटोफेशियल एमडीएस (ओर्थो.), जगतगुरु श्री शिवरत्रेश्वरा
ओर्थोपेडिक्स विश्वविद्यालय, मैसूर

(यदि 17-4-2012 को अथवा उसके
पश्चात प्रदान की गई हो)

ओरल मेडिसन एवं रेडियोलोजी
(यदि 17-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो)

एमडीएस (ओरल मेडिसिन), जगतगुरु श्री शिवरात्रेश्वरा विश्वविद्यालय, मैसूरू"

[सं. वी. 12017/14/2011-डीई]

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 2nd July, 2012

S.O. 3445.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely:—

2. In Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) after Serial No. 107, the following Serial number and entries shall be inserted, namely:—

"108 Jagadguru Sri JSS Dental College & Hospital, Mysore,

Shivarathreeshwara, Karnataka University, Mysore

"Master of Dental Surgery

Prosthodontics & Crown Bridge (if granted on or after 26-04-2012)

Conservative Dentistry & Endodontics (if granted on or after 26-04-2012)

Paedodontics & Preventive Dentistry (if granted on or after 19-04-2012)

Periodontology (if granted on or after 21-04-2012)

Oral & Maxillofacial Surgery (if granted on or after 19-04-2012)

Orthodontics & Dentofacial Orthopedics (if granted on or after 17-04-2012)

Oral Medicine & Radiology (if granted on or after 17-04-2012)

MDS (Prostho), Jagadguru Sri Shivarathreeshwara University, Mysore

MDS (Cons. Dent.), Jagadguru Sri Shivarathreeshwara University, Mysore

MDS (Paedo.), Jagadguru Sri Shivarathreeshwara University, Mysore

MDS (Perio), Jagadguru Sri Shivarathreeshwara University, Mysore

MDS (Oral Surgery), Jagadguru Sri Shivarathreeshwara University, Mysore

MDS (Ortho), Jagadguru Sri Shivarathreeshwara University, Mysore

MDS (Orl Med), Jagadguru Sri Shivarathreeshwara University, Mysore"

नई दिल्ली, 4 जुलाई, 2012

का.आ.3446.— केन्द्र सरकार, दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय दंत चिकित्सा परिषद् से परामर्श करने के बाद, एतद्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है, अर्थात्:—

2. दंत चिकित्सक अधिनियम, 1948 (1948 का 16) के क्रम संख्या 108 के बाद निम्नलिखित क्रम संख्याएं एवं प्रविस्थियां अन्तःस्थापित की जाएंगी, अर्थात्:—

"109 एनआईटीटीई विश्वविद्यालय (मानद विश्वविद्यालय), मंगलोर

ए.बी. शेटटी मेमोरियल दंत विज्ञान संस्थान, मंगलोर

मास्टर आफ डेंटल सर्जरी

पेरियोडोन्टोलोजी एमडीएस (पेरियो.), एनआईटीटीई

(यदि 24-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो) मंगलोर

पैडोडेंटिक्स एवं प्रोबेन्टिक्स डेन्टिस्ट्री एमडीएस (पैडो.), एनआईटीटीई

(यदि 24-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो) मंगलोर

ओरल एवं मैक्सिलोफेशियल सर्जरी एमडीएस (ओरल एवं मैक्स, सर्जरी),

(यदि 24-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो) मंगलोर

पैडोडेंटिक्स एवं प्रोबेन्टिक्स डेन्टिस्ट्री एमडीएस (पैडो.), एनआईटीटीई

(यदि 24-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो) मंगलोर

ओरल एवं थोलोजी एवं माइक्रोबायोलोजी एमडीएस (ओरल पैथ), एनआईटीटीई

(यदि 28-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो) मंगलोर

प्रोस्टोडेन्टिक्स और क्राउन एवं ब्रिज एमडीएस (प्रोस्टो), एनआईटीटीई

(यदि 28-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो) मंगलोर

कन्जरवेटिव डेन्टिस्ट्री एवं एंडोडेन्टिक्स एमडीएस (कन्ज, डेन्टिस्ट्री), एनआईटीटीई

(यदि 28-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो) मंगलोर

ओर्थोडेन्टिक्स एवं डैंटोफेशियल एमडीएस (ओर्थो.) एनआईटीटीई

ओर्थोपेंडिक्स विश्वविद्यालय (मानद विश्वविद्यालय),

(यदि 28-4-2012 को अथवा उसके पश्चात् प्रदान की गई हो) मंगलोर

[सं. वी. 12017/6/2009-डीई]

ANITA TRIPATHI, Under Secy.

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 4th July, 2012

S.O. 3446.—In exercise of the powers conferred by sub-section (2) of section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely:—

2. In Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) after Serial No. 108, the following Serial number and entries shall be inserted, namely:—

"109. NITTE University AB. Shetty Memorial Institute (Deemed University) of Dental Sciences, Mangalore Mangalore

Master of Dental Surgery

Periodontology MDS(Perio), NITTE University
(if granted on or after (Deemed University), Mangalore
24-04-2012)

Paedodontics and Preventive MDS (Paedo) NITTE University
Dentistry (Deemed University),
(if granted on or after Mangalore
24-04-2012)

Oral & Maxillofacial Surgery MDS (Oral Sur.), NITTE
(if granted on or after University
24-04-2012) (Deemed University), Mangalore

Oral Medicine & Radiology MDS (Oral Med), NITTE
(if granted on or after University
24-04-2012) (Deemed University), Mangalore

Oral Pathology & Microbiology MDS (Oral Path), NITTE
(if granted on or after University
28-04-2012) (Deemed University), Mangalore

Prosthodontics and Crown MDS(Prostho) NITTE University
& Bride (Deemed University), Mangalore

(if granted on or after (Deemed University),
28-04-2012) Mangalore

Conservative Dentistry & MDS (Cons. Den), NITTE
Endodontics University
(if granted or after 28-04-2012) (Deemed University),
Mangalore

Orthodontics & Dentofacial
Orthopedics
(if granted or after 28-04-2012)

MDS(Ortho), NITTE University
(Deemed University),
Mangalore"

[No. V. 12017/6/2009-DE]

ANITA TRIPATHI, Under Secy.

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 5 दिसम्बर, 2011

का.आ. 3447.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में कृषि एवं सहकारिता विभाग, कृषि मंत्रालय के सम्बद्ध कार्यालय विषयन एवं निरीक्षण निदेशालय, फरीदाबाद के अंतर्गत निम्नलिखित प्रशासनिक नियंत्रणाधीन कार्यालय को जिसके 80% कर्मचारीवृद्ध ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

विषयन एवं निरीक्षण निदेशालय,

नई सब्जी मण्डी परिसर,

निरंजनपुर, देहरादून (उत्तराखण्ड)

[सं. 3-3/2011 हि.नी.]

उमा गोयल, संयुक्त सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture and Cooperation)

New Delhi, the 5th December, 2011

S.O. 3447.—In pursuance of Sub Rule (4) of the Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976 the Central Government hereby notifies the following office which is under the administrative control of the Directorate of Marketing and Inspection, Faridabad an attached office of the Department of the Agriculture & Cooperation, Ministry of Agriculture, whereof 80% staff have acquired the working knowledge of Hindi:—

Directorate of Marketing and Inspection,
New Vegetable Market Complex,
Niranjanpur, Dehradun, (Uttarakhand)

[No. 3-3/2011-Hindi Neeti]

UMA GOEL, Jt. Secy.

4292 GI/12-2

उपभोक्ता मामले और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक व्यूरो)

नई दिल्ली, 16 नवम्बर, 2012

का.आ. 3448.— भारतीय मानक व्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक व्यूरो एतदद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम स्थापित भारतीय मानक (कों) की संख्या	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि	
(1)	(2)	(3)	(4)
1. आईएस/आईएसओ 3471:2008 मिट्टी उडाने की मशीनरी-रोल-ओवर संरक्षी स्ट्रॉबर-प्रयोगशाला परीक्षण एवं कार्यकारिता अपेक्षाएं			31 अगस्त 2012
2. आईएस/आईएसओ 5006:2006 मिट्टी उडाने की मशीनरी-चालक का दृश्य क्षेत्र-परीक्षण विधि एवं कार्यकारिता मानदण्ड			31 अगस्त 2012
3. आईएस/आईएसओ 20283-2:2008 यांत्रिक कंपन-जलपेतों पर कंपन मापन भाग 2 संरचनागत कंपन का मापन	आईएस 14728:1999 जहाजी कम्पन के आंकड़ों की रिपोर्ट करना और उसके मापन की संहिता आईएस 14729:1999 जहाजी संरचनाओं और उपस्करों के स्थानीय कम्पन आंकड़े रिपोर्ट करना और उनके मापन की संहिता		31 अगस्त, 2012
4. आईएस 12466:2012 बिल्डर हेतु हॉस्ट-सामान्य अपेक्षाएं (पहला पुनरीक्षण)	आईएस 12466:1988		30 सितम्बर 2012
5. आईएस 13404:2012 पावन ट्रायैल -सामान्य अपेक्षाएं (पहला पुनरीक्षण)	आईएस 13404:1992		30 सितम्बर 2012
6. आईएस 15947-2:2012 कंक्रीट के डिलीवरी पाईपलाइन भाग 2 पाईपलाइन सहायकांगों की सामान्य अपेक्षाएं			30 सितम्बर 2012

इस भारतीय मानक की प्रतियां भारतीय मानक व्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002 क्षेत्रीय कार्यालयों: कोलकाता, चंडीगढ़, चेन्नई, मुंबई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनंतपुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbisc.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ एम.ई.डी./जी-2:1]

तेजवीर सिंह, वैज्ञानिक 'एफ' एवं प्रमुख (यांत्रिक इंजीनियरिंग)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)
(BUREAU OF INDIAN STANDARDS)

New Delhi, the 16th November, 2012

S.O. 3448.— In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule here to annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1	IS/ISO 3471:2008 Earth-moving machinery—Roll-over protective structures—Laboratory tests and performance requirements	—	31 August, 2012
2	IS/ISO 5006:2006 Earth-moving machinery—Operator's field of view—Tests method and performance criteria	—	31 August, 2012
3	IS/ISO 20283-2:2008 (Superseding IS 14728:1999 and IS 14729:1999) Mechanical vibration—Measurement of vibration of ships Part 2 Measurement of structural vibration	IS 14728:1999 Code for the measurement and reporting of shipboard vibration data and IS 14729 : 1999 Code for the measurement and reporting of local vibration data of ship structures and equipment	31 August, 2012
4	IS 12466:2012 Builder's hoist—General requirements (first revision)	IS 12466:1988	30 September, 2012
5	IS 13404:2012 Power trowel—General requirements (first revision)	IS 13404:1992	30 September, 2012
6	IS 15947-2:2012 Concrete delivery pipelines Part 2 General requirements for pipeline accessories	—	30 September, 2012

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram, On-line purchase of Indian Standard can be made at: <http://www.standardsbis.in>.

[Ref. MED/G-2:1]

T.V. SINGH, Scientist 'F' & Head (Mechanical Engineering)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3449.—केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में भारत के राजपत्र तारीख 6-08-2011 में प्रकाशित भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 2051, तारीख 1 अगस्त, 2012 तथा भारत के राजपत्र तारीख 24-09-2011 में प्रकाशित अधिसूचना सं. का.आ. 2620, तारीख 19 सितम्बर, 2012 द्वारा संशोधित में निम्नलिखित रूप से संशोधन करती है, अर्थात्

उक्त अधिसूचना में शब्द “श्री शिवदत्त गौड (आर. ए. एस.) सक्षम प्राधिकारी, गुजरात स्टेट पेट्रोनेट लिमिटेड, 16, कृष्णा विहार, नारायण निवास के पास, गोपालपुरा बाईपास रोड, जयपुर-302015” के स्थान पर “श्री शिवदत्त गौड (आर. ए. एस.), सक्षम प्राधिकारी, जीएसपीएल इंडिया गैसनेट लिमिटेड (जीआइजीएल), महेसाना-भटींडा नेचुरल गैस पाइपलाइन नेटवर्क, 16, कृष्णा विहार, नारायण निवास के पास, गोपालपुरा बाईपास रोड, जयपुर-302015” शब्द रखे जायेंगे।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा.सं. एल-14014/39/2011-जी.पी.]

ए. गोस्वामी, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 21st November, 2012

S.O. 3449.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas *vide* No. S.O. 2051, dated 1-08-2011 published in the Gazette of India dated 6-08-2011; and subsequently amended *vide* No. S.O. 2620, dated 19-09-2011 published in the Gazette of India dated 24-09-2011; namely.

In the said notification for the words “Shri Shrivardhan Gaud (RAS), Competent Authority, Gujarat State Petronet Limited, 16, Krishna Vihar, Near Narayan Niwas, Gopalpura Bypass Road, Jaipur-302015” the words “Shri Shrivardhan Gaud (RAS), Competent Authority, GSPL INDIA GASNET LIMITED (GIGL), Mahesana-Bhatinda Natural Gas Pipeline Network, 16, Krishna Vihar, Near Narayan Niwas, Gopalpura Bypass Road, Jaipur-302015” shall be substituted.

This notification will be effective from the date of its issue.

[F. No. L-14014/39/2011-GP]

A. GOSWAMI, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 25 अक्टूबर, 2012

का.आ.3450.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 672/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 8-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/50/2002-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 25th October, 2012

S.O. 3450.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No. 672/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workman, which was received by the Central Government on 8-10-2012

[No. L-12012/50/2002-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. RASTOGI, Presiding Officer

Case No. I.D. 672/2005

Registered on 25.8.2008

Shri Sham Lal, S/o Sh. Dev Raj,
H.No.1882, VPO Burail, UT, Chandigarh.

Petitioner

Versus

The Branch Manager, Punjab and Sind Bank,
Sector 34-A, Chandigarh

Respondent

APPERANCES

For the workman Sh. Manjit Dhiman.

For the Management Sh. J.S. Sathi.

AWARD

Passed on September 3, 2012

Central Government vide Notification No. L-12012/50/2002 [IR(B-II)] Dated 7-7-2002, by exercising its powers

under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the Punjab and Sind Bank in termination of the service of Sh. Sham Lal, Ex-temporary Peon is just and fair? If not, what relief the workman is entitled to?"

As per claim statement the workman was appointed by the management as temporary Peon w.e.f. 27.11.1993 on daily wage basis and his services were terminated on 31.5.2000 without following the procedure provided in Section 25F of the Act, though he had completed 240 days of service preceding the date of his termination. The workman has alleged the violation of Section 25G and 25H also as while terminating his services the juniors to him were retained and fresh hands were also recruited. He has prayed for his reinstatement with continuity of service and back wages.

The claim was resisted by the management. In the written statement it was contended that the workman was employed on temporary basis on daily wages but he was not appointed by the Zonal Head who alone was competent to make appointment and the recruitment procedure was also not followed. At present the Bank does not require Peons and the workman had not put in continuous service to become entitled to the protection of Section 25F. The workman is therefore not entitled to reinstatement.

In evidence the workman examined himself and the management examined Harinder Singh, Senior Manager, Punjab and Sind Bank, Sector 34, Chandigarh.

I have heard the learned counsel for the parties and perused the evidence on record.

It may be mentioned that right of re-employment provided under Section 25H of the Act is not under reference. The Tribunal only has to see whether the action of the management in terminating the services of the workman is just and fair and if not to what relief the workman is entitled to? The workman has alleged his continuous employment with the Bank from 27.11.1993 to 31.5.2000 and has specifically alleged that he completed 240 days of service preceding his termination. The management has not denied the employment of the workman with the Bank in its written statement but had not disclosed the period of the employment. It neither affirmed nor denied the period of employment given by the workman in its claim statement. However it has been stated by the management that workman had not put in continuous service to become entitled to the protection of Section 25F of the Act. The management-witness Harinder Singh however admitted that the workman worked from 27.11.1993 to 31.5.2000 but the employment was from time to time according to him. It was not disclosed by the management that there were breaks in

the service of the workman. Once management admits that the workman was in the employment of the management from 27.11.1993 to 31.5.2000 that is for about six-and-a-half years, it was for the management to prove that there were breaks in the service of the workman during this period and the workman has not been in continuous service for one year to become entitled to the protection of Section 25F of the Act. Hence there is nothing to disbelieve the statement of the workman that he was continuously in the employment of the Bank for the said period. Admittedly the services of the workman were terminated without following the provisions of Section 25F of the Act. Obviously the services of the workman were not terminated in accordance with law and the termination being in violation of Section 25F, is invalid and non-est.

Since the appointment of the workman was not intermittent and the period of six-and-a-half years service clearly shows that appointment was not need based. Hence I find the workman entitled to reinstatement even if his appointment was without following recruitment procedure. An illegal appointment gives a right of termination to the management but it does not absolve it from following the procedure provided in Section 25F of the Act. I find therefore the workman entitled to reinstatement and continuity of service. I however do not find him entitled to back wages as there is nothing on record to show that the workman remained unemployed after his termination. The reference is accordingly decided in favour of the workman. The management is directed to take the workman on duty within one month from the date of publication of award. Let two copies of the award be sent to Central Government and one copy to District Judge Chandigarh for information and further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2012

का.आ.3451.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/ 195/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 10-10-2012 को प्राप्त हुआ था।

[सं. एल-12011/67/2000-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 25th October, 2012

S.O. 3451.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/195/2000) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management Central Bank Of India and their workman, which was received by the Central Government on 10.10.2012

[No. L-12011/67/2000-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/195/2000 Date: 28.09.2012.

Party No. 1 : The Zonal Manager,
Central Bank of India, Zonal Office,
Oriental Building, Kamptee Road,
Nagpur-440001.

Versus

Party No.2 : The General Secretary,
Central Bank Staff Union, Rashtriya Mill
Mazdoor Sangh, Kamgar Bhavan,
Kamgar Chowk, Great Nag Road,
Nagpur- 440003.

AWARD

(Dated : 28th September, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Central Bank of India and their union Central Bank Staff Union, for adjudication, as per letter No.L-12011/67/2000-IR (B-II) dated 17.07.2000, with the following schedule:—

"Whether the action of the management of Central Bank of India through its Zonal Manager, Zonal Office, Nagpur in non granting of posting of Computer Terminal Operator to Shri S. V. Balpure, Shri A. W. Deshpande, Shri A.S. Tekade, Shri S.K. Dubey, Shri V. V. Deshpande and Shri P.K. Borkar declared successful candidates by the Management dated 8.05.1996 in Akola Region and introducing fresh process for selection is legal, proper and justified? If not, to what relief the said workmen are entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Central Bank Staff Union", ("the union" in short) filed the statement of claim on behalf of the workmen, Shri S.V. Balpure, Shri A.W. Deshpande, Shri A.S. Tekade, Shri S.K. Dubey, Shri V.V. Deshpande and Shri P.K. Borkar ("the workmen" in short) and the management of Central Bank of India, ("Party No.1" in short) filed its written statement.

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The case as projected by the union on behalf of the six workmen in the statement of claim is that the workmen are its members and party no. 1 is a Nationalised Bank and is a Banking company having branches throughout the country and the branches in Nagpur, Amravati, Akola and Jalgaon are under the control of Zonal Manager, Nagpur and the Bank on 29.05.1995 arrived at a settlement in regard to computer terminal operator and chapter 23-A of the said settlement deals with the selection procedure and as per said the procedure, seniority of candidates was to be based on region and the Regional Office at Akola declared the result of 13 successful candidates on 8th May, 1996 as provided in the said promotion policy agreement and in pursuance of the declaration of the result on 08.05.1996 in Akola Region, four employees were declared as computer terminal operator ("C.T.O." in short) on 08.11.1996 and two were designated as such on 13.12.1996 and the said employees were actually posted and paid allowance of CTO, w.e.f. 14.05.1997 and out of the remaining seven employees, as the employee at serial no.1 refused his posting, the rest six employees were empanelled in waiting list and on 17.11.1998, the management amended the settlement and as per the amendment clause, station wise seniority was introduced in place of region-wise seniority and as such, the empanelled candidates as on 16.11.1998 were bifurcated into station wise seniority and such candidates were deemed to be empanelled under new dispensation to be posted in the same station as and when vacancy would arise on or after 17.11.1998 and the amended provision was to be effective only upon exhausting of the empanelled list prepared earlier and on 06.05.1999, the Regional Manager wrote a letter to Zonal Manager, Nagpur in the matter of selection of CTO and he identified six posts of CTO and the employees empanelled in the list were eligible to be designated and posted as CTO, instead of posting the employees who had been empanelled in the list, the Regional Office at Akola, initiated a fresh process of selection of CTO and such action was illegal and unfair labour practice.

The further case of the union is that in Jalgaon Region ten employees were declared successful on 02.03.1996 and out of them, one employee expired and one was transferred and the remaining eight employees were designated as CTO without any posting order and no computer is operating till today even though the empanelled list continue to exist and from the same, it is clear that the designation was given at the whim of the management and due to the action of the management of taking fresh process, the candidates, who had already been passed the examination, will have to appear in the examination again and there was deliberate attempt by the management not to post the candidates from the empanelled list in Akola region and the bank adopted different policy in different zone and implemented the settlement as per different interpretation at different zones/regions.

The union has prayed to direct the Bank to make payment of CTO allowance to the six workmen from the date of the posting of new candidates as CTO by declaring the action of the management in not designating and posting of the six workmen as CTO as unjust, improper and illegal.

3. Refuting the allegations made in the statement of claim, the party no. 1 in their written statement has pleaded inter-alia that All India Central Bank Employees Federation (AICBEF) is the recognized majority union for Award Staff/ workmen at their industry and all the agreements pertaining to the service area of the Award staff/workmen are finalized by the Bank in consultation/ discussion with the said majority union as per the Bank's practice/norms and the settlement with the recognized majority union, AICBEF in regard to the selection of CTO was arrived at by the Bank on 29.09.1995 and the relevant provisions of selection procedure for the CTO in terms of the said agreement are that, "23 A.5- As and when the need arises for selection of CTO, applications will be called for from willing clerical staff working in the Region who have completed three years of service. A list of such candidates would be drawn according to their inter-seniority by giving weightage for academic qualification as enumerated in chapter I of PPA and 23A 8-A list of selected candidates will be arranged as per the seniority with weightage for academic qualification as provided in chapter I of PPA and 23A.9-upon posting is made to the extent of vacancies declared, the remaining selected candidates will be empanelled for a period of 2 years from the date of posting of the first batch after announcement of the result." And the region wise seniority was replaced by station-wise seniority w.e.f. 17.11.1998 in terms of memorandum of settlement with AICBEF. The further case of party no. 1 is that Regional Office, Akola, in terms of agreement dated 29.09.1995 declared the result of 13 successful candidates on 08.05.1996 and out of them, four candidates were designated as CTO on 08. 11.1996 and two more were designated as CTO on 14.12.1996 and as out of the remaining seven candidates, the candidate at serial no. 1 refused the posting, the remaining six candidates were empanelled and in terms of clause 23.A of the PPA, the empanelled list was to be in force for a period of two years, from the date of posting of the first batch after announcement of the result and in this case, the result was announced on 08.05.1996 and the posting of the first batch of CTO was made as per order dated 08.11.1996 and as such, the empanelled list of the six candidates lapsed on 07.11.1998, well before the memorandum of settlement dated 17.11.1998 came into effect and therefore, the question of bifurcating the region wise empanelled list dated 08.05.1996 into station wise list and exhausting the said list of candidates does not arise and there was never any unfair labour practice by them and there was no breach of any bipartite settlement or any other settlement and the policy of the management regarding selection, designation and

posting of CTO has been uniform all over India and it has been applied in the same fashion in Nagpur zone also and as the empanelled list had already been expired, the union is not entitled to raise any claim and the six workmen are not entitled to any relief.

In the rejoinder, it is pleaded by the union that the four employees were designated as CTO on 08.11.1996, but actually they were posted and paid allowance w.e.f. 14.05.1997 and as such, the list of the six empanelled candidates was to expire on 13.05.1999 and not on 07.11.1998 as claimed by the management.

5. Both the parties have relied on documentary evidence in support of their respective claims. Besides the documentary evidence, the party no. 1 have adduced oral evidence to prove their case and have examined Shri R.L. Khandelwal, a Senior Manager of the Bank as a witness. No oral evidence has been adduced by the union.

6. The evidence of Shri Khandelwal is on affidavit. In his examination-in-chief, he has reiterated the facts mentioned in the written statement. It is to be mentioned here that in paragraph five of his affidavit, this witness has averred that, "In this case, the Regional Office, Akola has declared the result on 08.05.1996 and the posting orders are issued to the first batch on 08.11.1996 and as such the empanelled list got lapsed as on 07.11.1998 i.e. well before the memorandum of settlement which came into effect on 17.11.1998. Therefore, I submit that, the question of bifurcating the Region-wise empanelled list dated 08.05.1996 into station wise list and exhausting the said list of candidates existing as on 17.11.1998 by giving effect to the memorandum of settlement dated 17.11.1998 does not arise." and such assertion of the witness has not at all been challenged in the cross-examination.

This witness, has proved and exhibited the memorandum of agreement dated 29.09.2005, list of selected employee for CTO dated 08.05.1996 and copy of memorandum of settlement dated 17.11.1998 as Exts. M-II, M-III and M-IX respectively.

7. After taking into consideration the pleadings of the parties, the materials on record including the evidence adduced by the parties and the submission made by the learned advocates for the parties, it is found that there is no dispute between the parties about the settlements dated 29.09.1995 and 17.11.1998 and the process of selection procedure of candidates for CTO and that basing on the settlement dated 29.09.1995, 13 candidates including the present six workmen were declared to be successful on 08.05.1996 in Akola Region. There is also no dispute between the parties that as per the settlement dated 29.09.1995, the validity of the panel of selected candidates was for a period of two years from the date of posting of the first batch after announcement of the list.

The dispute between the parties in this case is regarding the date of posting of the first batch of the candidates as CTO in Akola Region. According to the union, the posting of the first batch of CTO in Akola region was done on 14.05.1997 and therefore, the list of empanelled candidates was to be lapsed on 14.05.1999 and not on 07.11.1998, as claimed by the party no.1. On the other hand, the case of the party no. 1 is that the posting of the first batch of CTO was made on 08.11.1996 after announcement of the result and as such, the empanelled list for Akola Region lapsed on 07.11.1998 and there was no empanelled list on 17. 11.1998, when the settlement dated 17.11.1998 became effective.

It is to be mentioned here that no evidence, either documentary or oral has been adduced by the union in support of its claim that though the first batch of candidates of Akola region were designated as CTO on 08.11.1996, actually they were posted on 14.05.1997.

8. Party no. 1 has also not produced any documentary evidence in support of the claim that the posting of the first batch of CTO was made on 08.11.1996. However, as already mentioned above, party no. 1 has adduced oral evidence in this regard. .

9. The union has mentioned about the dispute raised before the ALC (Central), New Delhi by the Central Bank Staff Union (Delhi) and the reply submitted by the Asstt. General Manager, Zonal Office, New Delhi of the Bank to show that the empanelled list prepared for CTO in Delhi Zone continued from 1996 to 1999, in support of their claim that the Bank did not adopt and uniform policy all over India. However, it is clear from the own pleadings of the union and the materials on record that the empanelled list in Delhi zone was extended as a onetime measure, after discussion with the majority union, with which the settlement dated 29.09.1995 had been entered, due to delay in installation of computers by the management and as such, the said facts are of no avail to the union to prove its case.

It is clear from the materials on record that empanelled list of candidate for CTO of Akola Region expired on 07.11.1998 and there is no merit in the claim raised by the union. Hence, it is ordered:-

ORDER

The action of the management of Central Bank of India through its Zonal Manager, Zonal Office, Nagpur in non granting of posting of Computer Terminal Operator to Shri S. V. Balpure, Shri A. W. Deshpande, Shri A.S. Tekade, Shri S.K. Dubey, Shri V.V. Deshpande and Shri P.K. Borkar declared successful candidates by the management

dated 08.05.1996 in Akola Region and introducing fresh process for selection is legal, proper and justified. The workmen are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2012

का.आ.3452.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम स्थायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/33/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.10.2012 को प्राप्त हुआ था।

[सं. एल-12012/145/2002-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी।

New Delhi, the 25th October, 2012.

S.O. 3452.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1974), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/33/2003) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Anexure in the Industrial Dispute between the employers in relation to the management Bank of India and their workman, which was received by the Central Government on 10-10-2012.

[No. L-12012/145/2002-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND PRESIDING OFFICER

CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/33/2003 Date: 27.09.2012.

Party No. 1 : The Zonal Manager,

Bank of India, Zonal Office, Kingsway,
Railway Station Road, Nagpur-440 001.

Versus

Party No. 2 : Shri Roshan S/o. Raju Jugal,

Near Mata Mandir, Siraspeth, Nagpur.

AWARD

(Dated: 27th September, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman, Shri Roshan Jugal, for adjudication, as per letter No.L-12012/145/2002-IR (B-II) dated 27.01.2003, with the following schedule:—

"Whether the action of the management of Bank of India through its Zonal Manager, Zonal Office, Nagpur and the Branch Manager Reshim Bag Branch, Nagpur in terminating the services of Shri Roshan S/o Raju Jugal, Sweeper w.e.f. 27.12.2001 is justified? If not, what relief the said workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Roshan Jugal, ("the workman" in short), filed the statement of claim and the management of Bank of India, ("Party No.1" in short) filed its written statements.

The case of the workman as presented in the statement of claim is that the party no. 1 is a Nationalized Bank and provision of the Act are applicable to party no. 1 and the party no. 1 is also governed by the provisions of Sastry Award, Desai Award and settlements signed between the Unions and Association of employers so far service conditions of the Bank employees are concerned and he was initially appointed at Reshimbagh Branch of the Bank in the year 1999 for few days and his services were utilized by party no. 1 for about 3 years for fetching water for the Branch on payment of Rs. 75 as wages per month and his services were also utilized as sweeper / sub-staff occasionally, during leave period of permanent employees on payment of Rs. 40/- as wages per day and in view of the above background and as he was very faithful and competent to work in the subordinate cadre, he was orally appointed on 22.11.2000 in the vacancy created in Reshimbagh Branch, Nagpur, due to suspension of one of its permanent sub-staff, who came to be dismissed subsequently by the Bank and he worked continuously till 27.12.2001 and during the said period, his services were also utilized on few Sundays and Holidays and he worked continuously for 333 days and he was paid wages weekly at the rate of Rs. 60 per day for the said period by office voucher, by the paying cashier of the branch and his services were terminated w.e.f. 27.12.2001 (wrongly mentioned as 27.11.2001) and he had put more than 240 days of service in the preceding 12 months of the date of termination and during the period of service, his services were utilized from 7 AM to 7 PM as sweeper and a sub-staff and as he was selected and appointed by the Bank to fill in permanent vacancy and he continued for 333 days in a post of permanent nature and therefore he became a probationer within the meaning of the definition of a probationer as defined in Sastry Award and the action of the management in terminating his services orally w.e.f. 27.12.2001, without any notice, disciplinary action or pay, in lieu of notice is bad in law and as the procedures prescribed under section 25-F of the Act were not followed, his termination is illegal and after his termination, the vacancy was filled in by junior employees deviating provisions of section 25- H and 25-G of the Act.

The workman has prayed to reinstate him in service with continuity, full back wages, seniority and all consequential benefits applicable to the permanent employee of the Bank.

3. The party no. 1 in their written statement have pleaded *inter-alia* that the workman was never appointed with them, much less at Reshimbag Branch and his services were never utilized by them and as such, the question of the workman working continuously from 22.11.2000 to 27.12.2001 does not arise and for that there is also no question of termination of his services and there exists no employee and employer relationship between them and the workman and as such, the reference is not maintainable, and as the workman was never appointed, the question of working continuously for 240 days does not arise and the provisions of sections 25-B, 25-F, 25-G and 25-H of the Act are not at all applicable and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that the party no. 1 have denied his entire claim, but wages were paid to him by Reshimbag Branch, Nagpur, on different dates through branch's authorized vouchers, after obtaining his signature on the reverse of the voucher as per practice and all the vouchers are with party no. 1 and despite the same, the party no. 1 has attempted to mislead the Tribunal by way of false and fabricated statements made in the written statement and bank have not came with clean hands.

5. The workman has led oral evidence in support of his claims, apart from placing reliance on documentary evidence. The workman has examined himself as a witness. His examination-in-chief is on affidavit. He has reiterated the facts mentioned in the statement of claim in his evidence. He has also proved the Xerox copies of the vouchers under which he had been paid wages by the Bank as Exts. W-2 to W-60. Though, in the written statement, party no. 1 has completely denied about the engagement of the workman in their Reshimbag Branch, during cross-examination, it was suggested to the workman that he was engaged by the Branch Manager, Mr. Dutta in the Bank and that his engagement was on daily wages basis and he was being paid wages in cash for the actual number of days, for which he was working and such suggestions were admitted by the workman. During cross-examination of the workman, it was also suggested to him by the party no. 1 that his engagement in the Branch was as and when basis, but such suggestion was denied by the workman. The suggestions given to the workman in his cross-examination, clearly show that party no. 1 has not come to the Tribunal with clean hands and tried to suppress the fact of engagement of the workman in Reshimbag Branch, by denying the engagement of the workman in toto, in the written statement.

The workman, in his cross-examination has admitted that there was no advertisement in the newspaper, by the

Bank regarding appointment of sub-staff and he did not appear in any selection test, before his engagement in the Bank and no appointment letter was issued to him by the Bank and in all the vouchers produced by him, it has been mentioned that the amount of wages is reimbursed to the Manager for daily wages sweeper.

6. No oral evidence has been adduced by the party no. 1.

7. During the course of argument, it was submitted by the learned advocate for the workman that the evidence on record clearly show that the workman was appointed in the Bank after due selection against the vacancy of permanent post and he worked continuously from 22.11.2000 to 27.12.2001 and the duties performed by the workman were of permanent nature and payment of wages was made to him through branch voucher periodically after obtaining his signature on the reverse of the voucher at the time of payment and before termination of the services of the workman *w.e.f.* 27.11.2001, neither one month's prior notice nor one month's pay in lieu of notice nor retrenchment compensation was paid, as required under Section 25-F of the Act and due to non compliance of the mandatory provisions of Section 25-F of the Act, the termination of the workman is illegal and the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits like a permanent employee of the Bank. In support of such contention, reliance was placed by the learned advocate for the workman on the decision reported in (2009) 8 SCC-556 (Maharashtra State Road Transport Corporation and Another Vs. Castrive Rajya Parivahan Karmachari Sanghatana).

8. Per contra, it was submitted by the learned advocate for the party no. 1 that the workman was never appointed by the Bank to work at Reshimbag Branch and the initial onus is on workman to prove that he worked for 240 days in a year and that there exists relationship of employer and employee and in this case, the workman had failed to discharge the initial onus of proving such facts by adducing reliable evidence and as such, the workman is not entitled to any relief.

In support of such contentions, the learned advocate for the party no. 1 placed reliance on the decisions reported in (2005) 8 SCC-750 (Surendranagar District Panchayat Vs. Dahyabhai Amar Singh), (2006) 9 SCC-697 (Krishna Bhagya Jal Nigam Ltd Vs. Mohd. Rafi) and (2009) 11 SCC-522 (Krishi Vs. Mahamad Rafi).

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the judgments cited by the learned advocates for the parties, now, the present case in hand is to be considered.

9. On perusal of the pleadings of the parties and the evidence adduced on record including Exts. W-2 to W-60

and Exts. M-I and M-II, it is found that though, the party no. 1 has denied the engagement of the workman in Reshimbag Branch, actually the workman was engaged in the said branch of the Bank on daily wages and he worked continuously from 22.11.2000 to 27.12.2001 and completed more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 27.12.2001. It is also found from the record that the engagement of the workman was made by the Branch Manager of the Branch and such engagement was not in accordance with the Recruitment Rules Regulation applicable to the Bank for recruitment of sub-staff and such engagement was also not against any permanent post. It is not disputed that the workman is a "workman" and party no. 1 is an "industry" as defined in the Act respectively. At the time of termination of the services of the workman, the mandatory provisions of Section-25-F of the Act were not complied with and as such, the termination of the workman is illegal and amounts to retrenchment.

10. The question now remains for consideration is as to what relief or reliefs the workman is entitled. In this regard, I think it proper to mention about the principles enunciated by the Hon'ble Apex Court in the case, between the "In-charge officer and another versus Shankar Shetty" reported in 2010(8)SCALE-583. In the said decision, Hon'ble Apex Court have held that, "Industrial Disputes Act, 1947/Section, 25F/Daily wager/Termination of service in violation of section 25(F)/Award of monetary compensation in lieu of reinstatement/Respondent was initially engaged as daily wager by appellants in 1978. His engagement continued for about 7 years intermittently up to 06.09.85 Respondent raised industrial dispute relating to his retrenchment alleging, violation of procedure prescribed in sec. 25(F) of the Act/Labour court rejected respondents claim: holding that section 25 (F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 06.09.85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal. Whether an order of reinstatement will automatically follow in a case where engagement of a daily wager has been brought to an end in violation of Section 25(F) of the Act Allowing the appeal held:

"The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 year intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable".

11. In this case, the workman was engaged by party no. 1 on daily wages basis on 22.11.2000. His engagement

continued for about a little more than one year upto 27.12.2001. In view of the such facts and circumstances of the case, the principles enunciated by the Hon'ble Apex Court as mentioned above are squarely applicable to the present case at hand. Applying the said principles, it appears to me that a relief of reinstatement is not justified in this case and instead monetary compensation would meet the ends of justice. In my considered opinion compensation of Rs. 30,000 (Rupees thirty thousand) in lieu of reinstatement shall be appropriate, just and equitable. Hence it is ordered:

ORDER

The action of the management of Bank of India through its Zonal Manager, Zonal Office, Nagpur and the Branch Manager Reshimbag Branch, Nagpur in terminating the services of Shri Roshan S/o. Raju Jugel, Sweeper w.e.f. 27.12.2001 is unjustified. The workman is entitled for monetary compensation of Rs. 30,000 (Rupees thirty thousand only in lieu of reinstatement. He is not entitled for any other relief.

The party no.1 is directed to pay the compensation of Rs. 30,000 (Rupees thirty thousand only) to the workman within one month from the date of Publication of the award in the official gazette

J.P. CHAND, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2012

का.आ.3453.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबंध नियोजकों और कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए/88/2010 (आईटीसी 06/09 ओल्ड) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/10/2012 को प्राप्त हुआ था।

[सं. एल-12011/96/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 25th October, 2012.

S.O. 3453.— In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award [Ref. No. CGITA/88/2010 (ITC.06/09 old)] of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 08/10/2012.

[No. L-12011/96/2006-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD

Present

Binay Kumar Sinha,
 Presiding Officer,
 CGIT-cum-Labour Court,
 Ahmedabad, Dated 04.09.2012

Reference: CGITA of 88/2010

Reference: ITC. 06/2009 (Old)

1. The Regional Manager,
 Dena Bank, Mahuva,
 Dist: Bhavnagar, Gujarat
2. Branch Manager,
 Dena Bank, Nr. Kanyashala,
 Mahuva.First Party

And their workman
 Shri Kamlesh Nandkishore Joshi,
 Through Saurashtra Shramik Sangh,
 Ist Floor, Omic Complex,
 Peer Challa Road, Bhavnagar,
 Gujarat.Second Party

For the first party: None

For the second Party: Shri Jogen Pandya, Advocate

AWARD

The Appropriate Government/Government of India, Ministry of Labour and Employment, New Delhi by order No. L-12011/96/2006- IR (B-II) dated 16th February, 2009 under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the ID Act, 1947, referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad formulating the terms of reference as follows:—

SCHEDULE

“Whether the demand of the Union that Shri Kamlesh Nandkishore Joshi who was designated as Badli Siphoy be made permanent peon in the Dena Bank from the date of his joining i.e. from 26-08-1993 and be given all the benefit of permanency is legal and justified. What relief the concerned workman is entitled to”?

2. Notices were issued to the parties after registering of case, second party through its union filed statement of claim at Ext. 4 putting all the grievances against the management of Dena Bank and making prayer for the relief that he was working as daily wager peon at Mahuva Branch and designated as Badli Siphoy be made permanent peon and also for any other order to which the workman is found entitled. Subsequently the case record received on transfer in this tribunal and the case was again registered as CGITA 88/2010 and notice was issued to the management of first

party for appearance and for filing written statement in this case.

3. In the meantime a pursis at Ext. 11 was filed on 31.07.2012 by the concerned workman Kamlesh Nandkishore Joshi to the effect that the management of Dena Bank is ready to keep him in the job. Subject to withdrawal of this reference case by the concerned workman and so, prayer was made through Ext. 11 for permitting the second party workman to withdraw this reference case. Since the pursis at Ext. 11 was not pressed on 31.07.2012 so it was kept for hearing on 16.08.2012 and when on 16.08.2012 the case was called out the second party workman was absent first party management had not appeared in this case and so next date 26.09.2012 was fixed for filing written statement by the first party Dena Bank and also for hearing on Ext. 11 (withdrawal pursis). Again on 03.09.2012 an application on behalf of the workman was filed by Shri Jogen Pandya, Advocate for keeping the matter regarding hearing on withdrawal pursis on board which is fixed on 26.09.2012, on the ground that the management of Dena Bank is pressing hard to the second party workman to withdraw the reference case at the earliest so that he may be engaged in the job of the first party Bank. After hearing on this pursis on Ext. 12, the case record was ordered to be put up on board on 04.09.2012.

4. Heard the workman and his layer on the withdrawal pursis Ext. 11. Also perused the record. It appears that the withdrawal pursis (Ext. 11) had been filed on the ground that if this reference case is withdrawn by the workman Kamlesh Nandkishore Joshi then first party Dena Bank will again appoint him in the job. The concerned workman who is present in the court was also asked about the withdrawal pursis who stated that the withdrawal pursis at Ext. 11 had been filed voluntarily with his own will in order to get back job in the bank of the management of first party. The withdrawal pursis appears to be in order. So the following order is passed.

ORDER

This reference case is dismissed as withdrawn as per withdrawal pursis at Ext. 1 filed by the second party workman.

Accordingly this award is passed.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2012

का.आ. 3454.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I, नई दिल्ली के पंचाट (संदर्भ संख्या 157/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/267/97-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 25th October, 2012

S.O. 3454.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 157/2011) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 10-10-2012.

[No. L-12012/267/97-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

**BEFORE DR.R.K.YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX,
DELHI**

I.D. No.157/2011

The Secretary,
All India Allahabad Bank Emps' Union,
Allahabad Bank, Baroda House,
New Delhi.

... Workman

Versus

The Zonal Manager,
Allahabad Bank,
Merchant Banking Division,
17, Parliament Street,
New Delhi-110001.

... Management

AWARD

Allahabad Bank (in short the bank) conducts aptitude tests for promotion to the post of Computer Operator. Shri Satish Taneja, Clerk, posted in the bank appeared for the aptitude test in 1986-87 and qualified it. However, in the matter of officiating, persons senior to him were preferred though they had not qualified the aptitude test, in pursuance of provisions contained in memorandum of settlement dated 22.04.1898 (in short the settlement). This made Shri Taneja to feel aggrieved. He approached the All India Allahabad Bank Employees Union (in short the union), which was not a signatory to the above settlement, for redressal of his grievance. The union raised an industrial dispute before the Conciliation Officer. Since the bank

contested the claim, conciliation proceedings ended into failure. On consideration of failure report, so submitted by the Conciliation officer, appropriate Government referred the dispute to this Tribunal for adjudication *vide* order No.L-12012/267/97-IR(B-II) New Delhi dated 13.07.1998 with following terms:

"Whether the Memorandum of Settlement dated 22.04.1989 is applicable to the members of the other unions, not signatory to this settlement? If not, to what relief the workman is entitled?"

2. Claim statement was filed by the union pleading therein that Shri Taneja is a permanent employee of the bank and is presently posted at its Lajpat Nagar branch. In 1986-87, he qualified aptitude test for promotion to the post of Computer Operator. Since he was qualified to work as computer operator, he requested the branch authorities to allow him to officiate as computer operator. However, he was not allowed to officiate as such, while clerk/cashiers who had not qualified the aptitude test were allowed to officiate as computer operators. It was so done with a biased intention and action of the bank was discriminatory.

3. The union pleads that Shri Taneja was not allowed to officiate since the union was not a signatory to the settlement. The bank favoured members of the rival union. Persons who have not qualified in computer aptitude test were allowed to officiate as such. Since the union is not a signatory to the settlement, it cannot bind its members. Provisions relating to grant of officiating allowance in the settlement, referred above, are not based on any justification. The union, which is signatory to the aforesaid settlement, is not registered under the Trade Unions Act 1926 and as such, the said settlement is illegal. It has been claimed that this Tribunal may declare the action of the bank as illegal and direct it to pay officiating allowance to Shri Satish Taneja.

4. Claim was resisted by the bank pleading that the settlement was entered into between the bank and the recognized majority union. All India Allahabad Bank Employees' Co-ordination Committee is a registered union under the Trade Union Act 1926 and recognized majority union, which entered into the settlement, which settlement is binding on all minority unions. An employee who is not a signatory to that settlement has no locus standi to challenge validity of the settlement made with the recognized union. However, subsequently, all unions have accepted the settlement and thus acquiesced in respect of the contents recorded therein. The claimant union is thus estopped from challenging the act of the bank. The bank does not dispute that Shri Satish Taneja qualified aptitude test for computer operator. However, it pleads that aptitude test is conducted to promote an employee to the post of computer operator on regular basis. The post of computer operators are to be filled from amongst the employees who have qualified aptitude test. But cases of emergent and

temporary needs require the bank to depute senior-most employee to officiate on that post, which is done in pursuance of settlement dated 22.04.1989. Since Shri Taneja was not the senior-most employee to discharge such duties on temporary basis, his claim for officiating allowance is untenable. The bank projects that the claim put forward by the claimant is unfounded, hence it may be dismissed.

5. Shri Satish Taneja entered the witness box to project facts on behalf of the claimant union. Shri A.K. Nagar, Senior Manager (Personnel) unfolded facts on behalf of the bank. No other witness was examined by either of the parties.

6. *Vide* order No. Z 22109/6/2007/IR-(C II) New Delhi dated 11.02.2008, the case was transferred to Central Government Industrial Tribunal II, New Delhi by the appropriate Government while using its powers contained in Section 33 B of the Industrial Disputes Act, 1947 (in short the Act). The case was retransferred to this Tribunal for adjudication, *vide* order No. L-12012/267/97-IR(B-II) New Delhi dated 30.03.2011, by the appropriate Government.

7. Argument were heard at the bar. Shri R.S. Saini, authorized representative, advanced arguments on behalf of the claimant union. Ms. Kittoo Bajaj, authorised representative, presented facts on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

8. Shri Nagar testified that the settlement dated 22.04.1989 was entered into between the bank and the All India Bank Employees Co-ordination Committee, a recognized union. Subsequently, settlement dated 20.07.1998 was entered into between the Bank and the aforesaid union, which was accepted by all unions. He declares that the claimant union is acquiesced in the settlement dated 22.07.1998 and thus it is estopped from challenging the said settlement, claiming it to be non signatory to the settlement dated 22.04.1989. During the course of his testimony, Shri Taneja concedes that All India Bank Employees Co-ordination Committee is the recognised majority union. Therefore, out of the facts detailed above, it is crystal clear that All India Bank Employees Co-ordination Committee is a recognised majority union, which entered into settlement dated 22.04.1989 with the bank.

9. Settlement is a result of collective bargaining and when a recognised union negotiates with the employer, workers as individuals do not come into picture and it is not necessary that such individual workers should know the implication of the settlement, since the recognized union is expected to protect legitimate interest of the labour. A recognized union enters into a settlement with the best interests of the labour in view. There may be exceptional cases where allegation of malafide, fraud or even corruption or other factors are levelled. Such a situation cannot

altogether be ruled out. Settlements in course of collective bargaining ought to be weighed in their proper perspective and to be considered by law courts while implementing the same as representing the wishes and desires of the workmen of the concerned organization. A settlement ought not to be interfered with so easily even though it may operate with a little bit of harshness to a section of its employees and there ought to be some amount of give and take for the proper industrial peace and harmony in the country. Therefore, this Tribunal has a bounden duty to maintain such settlements and to give due consideration to the settlement arrived at between the recognised union and the bank. It would be improper for this Tribunal to ignore the settlement and insert something which is totally different. However, question of justness and fairness of the settlement has to be examined with reference to the situation as it stood on the date it was arrived at.

10. Here in the case, claimant union simply alleges that the settlement dated 22.04.1989 was arrived at with the rival union. No allegation of malafide, fraud, corruption or other factors which may tilt the situation in their favour, were levelled by the claimant union. There is a dearth of evidence to project that the majority recognised union had not taken into account the legitimate interest of the employees of the bank when the settlement was entered into. It has also not been projected that when the settlement was signed, at that time office bearers of the recognized majority union had entered into a deal with the bank and with that idea in their mind, interest of employees of the bank was sacrificed by them. It is evident that no evidence was put forward by the claimant union to question justness or fairness of the settlement under reference.

11. Settlement dated 22.4.1989 was entered into, otherwise than in the course of conciliation proceedings. Question for consideration would be as to whether the settlement would bind the minority union? As apparent from the provisions of sub-section (1) of Section 18 of the Act, settlement shall be binding only on the parties to the agreement. When settlement has been entered into by the majority recognised union, in such a situation all employees do not, as a matter of fact, become parties to the settlement. A settlement, in these circumstances, is to be signed by such representatives and would bind the employees. Terms of the settlement become part of the contract of employment of each individual workman, represented by the union. A settlement, arrived at between the employer and the union representing majority of the workman, shall not be binding on the union which represents minority workman, since it was not a party to the settlement, announced the Apex Court in *Tata Chemicals Ltd. (1978 Lab. IC 637)*. However, in order to make such settlement binding on the members of the minority union, it should be arrived at by agreement between the employer and the workman. In *Herbertsons Ltd. (1977 Lab.*

IC 162) Apex Court announced that even if a few workers were not members of the majority union, it would be just and fair that the settlement arrived at otherwise than in the course of conciliation proceedings should not be disturbed particularly when recognized and registered union enters into voluntary settlement. However, in Tata Chemicals (supra) it was ruled that such settlement will not bind minority union.

12. To project that such settlement is not binding on the claimant union, it has to be established that substantial number of workmen were not party to the settlement entered into with the majority union. Shri Taneja presents that there were 35 members of the claimant union in Delhi. He admits that there were about 200 employees in the bank in Delhi. Out of these facts referral above, it is apparent over the record that the claimant union nowhere represents a substantial number of employees working in the bank here in Delhi. On the other hand, majority recognized union represents more than 80% of the employees of bank posted herein Delhi. Thus, it emerged that the major union had substantial number of workmen as its members, whose interest it protected while signing the settlement referred above. Settlement was signed between the bank and the majority union in the form of an agreement. These factors project that the settlement signed by the majority union represents interest of substantial number of employees working in the bank. Law laid in Herbertson Ltd. (supra) applies to the present controversy, which decision was handed down prior to Tata Chemicals Ltd. (supra). While pronouncing the verdict in Tata Chemicals Ltd., decision in Herbertson Ltd. Was not considered. Precedent which is handed down earlier rules the field. Therefore, it is concluded that the settlement dated 22.04.1989 is binding on the minority union also.

13. There is other facet of the coin. Settlement dated 20.07.1998 was entered into between the bank and the majority recognized union, which was subsequently accepted by all the unions. In the said settlement, terms of settlement dated 22.04.1989 are reaffirmed. Thus, it is emerging over the record that when the claimant union had acquiesced in to the contents of the settlement Ex.MW1/1, under these circumstances, their contest becomes unfounded. It stood established that settlement, Ex.MW1/1 binds the claimant union also.

14. Aptitude test is to be conducted by the bank for promotion as Computer Operator/ALPM Operator/AEAM Operator/Data Entry Operators etc. on the basis of the area in which employees in clerical cadre are eligible to appear. List of successful employees is maintained by the bank, and they need not reappear in subsequent aptitude test. As and when vacancies for the post of Computer Operators fall vacant in an area, employees who have qualified the aptitude test and whose names exist in the list of successful candidates shall be eligible to apply for the post. On

receipt of options, their names would be considered as per the seniority. Preference would be given to seniority. Thus, it is emerging over the record that aptitude test is conducted by the bank to promote employees of clerical cadre against permanent vacancy. It is not the case of Shri Taneja that his name was not considered against a permanent vacancy.

15. For relieving purposes or in emergent and temporary needs, individual office shall assign duties on temporary basis to sub/non subordinate staff as the case may be, amongst the senior-most persons as temporary hand in the post attracting officiating allowance. A person who officiates as aforesaid, shall have no claim for appointment to permanent vacancy otherwise than in the manner laid down by the settlement, projects clause 4.1 of the aforesaid settlement. Shri Taneja concedes in his testimony that he was not senior-most employee amongst successful candidates, who had qualified the aptitude test. Thus, it is emerging over the record that Shri Taneja was not allowed to officiate, not being senior-most employee in the branch. Claim to officiate cannot be projected on the grounds that an employee had qualified aptitude test. Therefore, it is evident that Shri Taneja had no claim to officiate as Computer Operator.

16. In view of the reasons detailed, the claimant union is not entitled to any relief. Shri Taneja is also not entitled to any officiating allowance, for the period when he was not allowed to officiate, not being senior-most in the branch. The claim put forth is devoid of merits. Same is, accordingly, dismissed. An award is passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dated : 7-9-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2012

का.आ.3455.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/150/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/10/2012 को प्राप्त हुआ था।

[सं. एल-12013/96/98-आई आर (बी-II)]

शीशा राम, अनुभाग अधिकारी

New Delhi, the 25th October, 2012

S.O. 3455.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/150/99) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of Bank of Maharashtra and their workman, which was received by the Central Government on 10.10.2012.

[No. L-12013/96/98/IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/150/99

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

The Deputy General Secretary,
Union of the Maharashtra Bank Employees,
Hanuman Mandir Gali,
Yadav Colony, Jabalpur.

... Workman/Union

Versus

Regional Manager,
Bank of Maharashtra,
Regional office,
Wright Town, Jabalpur

... Management

AWARD

Passed on this 12th day of September, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-12013/96/98/IR(B-II) dated 23-3-99/30-3-99 has referred the following dispute for adjudication by this tribunal:-

“Whether the action of the Regional Manager, Bank of Maharashtra, Regional Office, Jabalpur in awarding punishment of compulsory retirement w.e.f. 12-3-97 to Shri Foolsingh Thakur, Sub Staff of Bank of Maharashtra Seoni Branch is justified? If not, what relief the workman is entitled to?”

2. The case of the Union/workman in short is that the workman Shri Fool Singh Thakur was working as Bill Collector at Seoni of Bank of Maharashtra. He was asked to collect the proceeds of OBC No. 16/93 of Rs.9369 and after receipt to deposit the same to the Bank. But he was alleged to have misappropriated the same for a period of 10 months and deposited in two instalments *i.e.* on 24-1-94 of Rs.7150 and on 1-2-94 of Rs.2219. He was accordingly charge sheeted on 4-7-95. An enquiry proceeding was initiated and finally the enquiry report was submitted on 24-6-96. The Disciplinary Authority considering the findings of the Enquiry Officer passed the order of punishment of compulsory retirement on 12-3-1997. The delinquent workman preferred an appeal but the Appellate Authority without giving opportunity of personal hearing

rejected the appeal *vide* order dated 2-2-1998. The charges were ambiguous and non-specific. It is stated that the workman had informed the Bank Manager about the loss of the amount on way while coming from the Post Office but no complaint was lodged by the Bank Manager to the police. The amount was finally deposited by the workman on the pressure of the Bank Manager. It is stated that the punishment imposed upon the workman is arbitrary and is not proportionate to the alleged charges in the above circumstances. It is submitted that the reference be answered in favour of the Union/workman.

3. The management appeared and filed Written Statement in the case. The case of the management, *inter alia*, is that the workman was working as sub staff. On 12-4-93, he was asked to collect the proceeds of one OBC amount. He received the said amount but did not inform the same to the Bank Manager nor deposited the proceeds received from the Post Office. After ten months he deposited the amounts in two instalments. He was admittedly chargesheeted on 4-7-95. A departmental enquiry was conducted against him. He had been given full opportunity to defend himself. The Enquiry Officer after considering the entire evidence found the charges as proved and submitted his report. The Disciplinary Authority found the charges as proved passed the order of punishment of each of the charges. The workman preferred an appeal but the Appellate Authority confirmed the punishment awarded by the Disciplinary Authority. It is stated that the charges were not vague or ambiguous nor the findings of the Enquiry Officer is perverse. The punishment awarded to the workman is proper after taking into consideration the seriousness of the misconducts and the evidence on record. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed on recast for adjudication-

I. Whether the departmental enquiry conducted by the management against the workman is legal and proper.

II. whether the punishment awarded to the workman is proportionate to the charges proved against the workman?

III. To what relief, if any, is the workman entitled?

5. Issue No. I

This issue is taken up as a preliminary issue. After hearing both the parties and after perusing the record and the evidence adduced in the departmental enquiry, it is held that the departmental enquiry conducted against the workman is legal and proper *vide* order dated 7-4-2001. Thus this issue is already earlier decided against the workman and in favour of the management.

6. Issue No. II

Now there is very limited scope as to whether the punishment is just and proper in view of the charges

committed by the workman. Admittedly the workman was Bill collector. He was directed to collect the proceeds of one OBC from the post office on 12-4-93. He collected the same but deposited the same in two instalments after ten months. In this case no fresh evidence is adduced. The evidence of the enquiry proceeding clearly shows that the workman had informed about the amount after ten months and he became absent after receiving the proceeds from the Post Office for 132 days. It also appears that the workman was in need of money on account of illness in the family. I find that the finding is not perverse rather there were evidence in the departmental enquiry to establish the charges.

7. The learned counsel for the management submitted that the workman was awarded punishment of compulsory retirement. The provision of Section 11 A of the Industrial Dispute Act, 1947 (in short the Act, 1947) is not applicable as it relates to only discharge or dismissal. It appears that the provision of Section 11 A of the Act 1947 is only applicable in case of dismissal or discharge to set aside the award or to award lesser punishment as the circumstances of the case may require. Moreover I find that the misconduct committed by the workman appears to be of serious nature and therefore I do not find any reason to interfere in the punishment awarded by the management. This issue is accordingly decided against the workman and in favour of the management.

8. Issue No. III

On the basis of the discussion made above, it is clear that the action of the management is legal and justified. The workman is not entitled to any relief. Accordingly the reference is answered.

9. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer.

नई दिल्ली, 25 अक्टूबर, 2012

का.आ.3456.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, अजमेर के पंचाट (संदर्भ संख्या सी.आई.टी.आर. 02/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/10/2012 को प्राप्त हुआ था।

[सं.एल-12012/43/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 25th October, 2012

S.O. 3456.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. C.I.T.R. 02/2010) of the Industrial Tribunal/Labour Court, AJMER now as

shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO BANK and their workman, which was received by the Central Government on 08/10/2012.

[No. L-12012/43/2010-IR(B-II)]
SHEESH RAM, Section Officer

अनुबंध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर
पीडीसीन अधिकारी—श्री मनोज कुमार व्यास, आईएचजॉएस०

प्रकरण संख्या—सी.आई.टी.आर. 02/2010

रेफरेंस संख्या—एल-12012/43/2010 आई आर बी-1

दिनांक 25.8.2010

श्री प्रदीप पुत्र श्री रामस्वरूप निवासी चंद्रवरदाई नगर,
कच्ची बस्ती हरिजन मौहल्ला, अजमेर
...प्रार्थी

बनाम

वरिष्ठ शाखा प्रबंधक यूको बैंक, डीएचवी० कॉलोज, अजमेर
...अप्रार्थी

उपस्थिति

प्रार्थी की ओर से : श्री शोभित पंत, अधिवक्ता।
अप्रार्थी की ओर से : श्री कृष्णावतार, अधिवक्ता।

अवार्ड

दिनांक 27.8.2012

श्रम विभाग, केंद्र सरकार द्वारा इस न्यायालय के अधिनिर्णयार्थ निम्न रेफरेंस प्रेषित किया है:-

2. “Whether the action of the management of UCO Bank, DAV College, Ajmer in discharging Shri Pradeep the workman from service w.e.f. 14-8-2007 is legal and justified? What relief the concerned workman is entitled to?”

3. नोटिस के उपरांत उभयपक्ष उपस्थित आये। प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम प्रस्तुत कर कहा गया है कि उसका क्लेम स्वीकार कर उसकी अवैध सेवामुक्ति दि. 14.8.07 को अनुचित घोषित कर पूर्ण निरंतरता के साथ सारे पूर्व देय वेतन लाभों सहित नियमानुसार अदा करने का अवार्ड पारित करने की प्रार्थना की है क्योंकि प्रार्थी दि. 17.1.07 को अप्रार्थी संस्थान में अस्थाई रूप से सफाई कर्मचारी की हैसियत से सौ रुपये प्रतिमाह की दर से भुगतान करते थे। आगे क्लेम में यह भी अंकित किया है कि जब उसने कम वेतन बाबत शिकायत की तो उसे दि. 14.8.07 को नौकरी से हटा दिया व अन्य कर्मचारी को रख लिया। आगे क्लेम में यह भी अंकित किया है कि उसकी सेवामुक्ति दिनांक तक लगातार 240 दिन होने के बावजूद भी ना तो मुआवजा दिया, न ही नोटिस दिया तथा धारा 25 जी व एच के प्रावधानों की भी पालना नहीं की। अंत में अप्रार्थी के जवाब का उत्तर देने के अधिकार को सुरक्षित रखने बाबत उल्लेख किया है।

4. अप्रार्थी की ओर से जवाब में यह कहा गया है कि प्रार्थी का क्लेम निरस्त किया जा कर रेफरेंस का उत्तर अप्रार्थी के पक्ष में दिया जावे क्योंकि अप्रार्थी शाखा में सफाई के कार्य के लिये कोई नियमित पद स्वीकृत नहीं है सफाई का कार्य चतुर्थ श्रेणी कर्मचारी द्वारा किया जाता है तथा टॉयलेट की सफाई का कार्य सप्ताह में एक बार पंद्रह बीस मिनट का कार्य होता है। आगे जवाब में यह भी अंकित किया है कि शाखा प्रबंधक को किसी भी व्यक्ति को नियमानुसार कार्य पर रखने का अधिकार नहीं है। आगे जवाब में यह भी वर्णित किया है कि प्रार्थी श्रमिक की परिभाषा में नहीं आता है। अंत में प्रार्थी को किसी अनुतोष का अधिकारी नहीं होना भी कहा है।

5. बहस सुनी गयी, पत्रावली का अवलोकन किया गया। प्रार्थी पक्ष की साक्ष्य में स्वयं प्रार्थी प्रदीप के ए डब. 1 के रूप में बयान करवाये गये हैं। अप्रार्थी की ओर से साक्ष्य में एन ए डब. 1 ईश्वर चंद्र लखोटिया के बयान करवाये गये। बहस में प्रार्थी की ओर से यह कहा गया है कि उसके द्वारा अप्रार्थी संस्थान में लगातार 240 दिन तक कार्य किया गया है परन्तु अप्रार्थी ने उसे औद्योगिक विवाद अधि. के प्रावधानों की पालना किये बिना सेवामुक्त कर दिया उसे न तो मुआवजा दिया गया न ही नोटिस दिया गया। इसी प्रकार धारा 25 जी व एच के प्रावधानों की पालना भी नहीं की गयी। प्रार्थी को अनुचित रूप से सेवामुक्त किये जाने के पश्चात् अप्रार्थी ने अन्य व्यक्ति को नौकरी पर रख लिया। अतः निवेदन किया कि प्रार्थी की सेवा समाप्ति को अवैध अनुचित घोषित करते हुए सेवा में निरंतरता सहित पुनः बहाल किया जावे। प्रार्थी की ओर से अपने तकों के समर्थन में निम्नलिखित न्यायिक दृष्टांत पेश किये गये, जिनका संसम्मान् अवलोकन किया गया:—

1-2000 1 एल एल एन पट्टना 693,

2-1989 2 एल एल डब 336

6. अप्रार्थी की ओर से बहस में यह कहा गया है कि प्रार्थी ने अप्रार्थी संस्थान में एक कैलेंडर वर्ष में 240 दिन से अधिक कार्य नहीं किया। प्रार्थी को अप्रार्थी संस्थान ने कोई नियुक्ति नहीं दी गयी। अप्रार्थी संस्थान में नियुक्ति हेतु निर्धारित प्रक्रिया है, चाहे वह नियुक्ति स्थायी पद पर हो अथवा पार्टटाईम पद पर हो। प्रार्थी टॉयलेट व शौचालय की सफाई माह में चार-पांच बार आकर करता था। जिसमें मात्र 15-20 मिनट का समय लगता था उस कार्य के लिए उसे निश्चित शुल्क सौ रुपये दिया जाता था तथा यह नहीं माना जा सकता कि प्रार्थी को अप्रार्थी संस्थान में पूर्ण कालिक अथवा पार्टटाईम नियुक्ति दी गयी हो। बहस में यह भी कहा गया कि प्रार्थी ने अप्रार्थी संस्थान में नियुक्ति अथवा सेवा संबंधी कोई दस्तावेज प्रस्तुत नहीं किये हैं तथा ऐसी कोई प्रलेखीय साक्ष्य नहीं है जिसके आधार पर यह माना जा सके कि प्रार्थी ने अप्रार्थी संस्थान में नियुक्ति प्राप्त की हो व वहां सेवा दी हो। इस संबंध में नियमों की प्रति अवलोकनार्थ प्रस्तुत की गयी अप्रार्थी पक्ष की ओर से भी निम्नलिखित न्यायिक दृष्टांत पेश किये गये, जिनका संसम्मान् अवलोकन किया गया:—

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ए-2002 2 लैब आई सी पेज 987,

बी-2008 लैब आई सी 1397,

सी-2009 लैब आई सी एन ओ सी 147,

डी-2004 1 आर एल आर 289

7. उपरोक्त विवाद के संदर्भ में साक्ष्य का विवेचन किया गया। गवाह ए डब. 1 सुनील कुमार ने अपनी मुख्य परीक्षा में क्लेम के तथ्यों की पुष्टि की है। जिरह में यह कहा है कि बैंक ने मुझे नियुक्त करने का पत्र नहीं दिया। मैं बैंक की डाक लाने-से जाने का काम करता था। सुबह नौ बजे बैंक जाया करता था।

शाम को साढ़े छः बजे आता था। उपस्थिति रजिस्टर में हस्ताक्षर नहीं करता था। मेरे पास ऐसा कोई कागज नहीं है जो यह बताता हो कि मैंने बैंक में काम किया था। बाउचर है, बाउचर पेश किये थे फिर फाईल देखकर गवाह ने जाहिर किया कि बाउचर पत्रावली पर नहीं है। हाजरी प्रतिदिन बाउचर पर ही होती थी। मेरी मां मुन्नी देवी बैंक में काम करती थी इसका दस्तावेज मेरे पास नहीं है। मेरी मां को बैंक से पेंशन नहीं मिलती है। मुझे मैनेजर ने सफाई के काम के लिए रखा था। मैनेजर का नाम याद नहीं है।

कोई बैंकेंसी नहीं निकाली थी बल्कि यह मेरी मां से कहा था कि तुम अपने लड़के को हमारे यहां सफाई के लिए लगा दो। मैंने लिखित में भी कोई अर्जी बैंक में काम पर रखने के लिए नहीं दी थी। मुझे सौ रुपये मासिक वेतन मिलता था। मेरे काम पर लागने के पद्धति दिन बाद मैनेजर रिटायर हो गये थे। उनके बाद को भी मैंने लिखित कर नहीं दिया था। बाद में कौन-कौन मैनेजर रहे मुझे उनका नाम याद नहीं है। जिन मैनेजर ने मुझे हटाया उनका नाम भी याद नहीं है। लिखित आदेश से नहीं हटाया। हटाया उस दिन भी मैंने लिखित कर नहीं दिया था। उसके बाद भी नहीं दिया। टॉयलेट्स की सफाई मैं ही करता था। मुझे हटाने के बाद धर्मेन्द्र सिंह को काम पर रखा था। दि 31.12.08 के बाद भी मैंने अर्जी नहीं दी। यह कहना गलत है कि वहां बाबू के अलावा चपरासी भी था जो सफाई का काम करता था। बैंक खोलने का काम चंद्रवरदाई में रहने वाला श्रवण खोलता था वहां बंद करता था चाबी उसी के पास रहती थी। यह सही है कि सप्ताह में दो दिन सफाई करने के लिए मुझे कह रखा था। यह गलत है कि मुझे केवल इसी काम के सौ रुपये मासिक देते हो बल्कि बाहर भीतर की सफाई करता था।

8. गवाह एन ए डब. 1 ईश्वरचंद्र ने मुख्य परीक्षा में यह कहा है कि बैंक में सफाई हेतु चतुर्थ श्रेणी कर्मचारी नियुक्त होता है उसके द्वारा ही सफाई की जाती है। प्रदीप कुमार टॉयलेट व शौचालय की सफाई सप्ताह में एक बार आकर कर जाता था जिसमें लगभग पंद्रह-बीस मिनट समय लगता था तथा भाव में चार-पांच बार सफाई का काम करता था जिसके लिए उसे निश्चित शुल्क सौ रुपये दिया जाता था। बैंक में चतुर्थ श्रेणी कर्मचारी आंशिक अथवा अस्थायी अथवा सफाई कर्मचारी रखने की एक निश्चित प्रक्रिया है जिसके तहत नियुक्त दी जाकर निश्चित वेतनमान दिया जाता है। प्रार्थी को इस प्रकार की नियुक्ति पर रखा ही नहीं गया तो निकाले जाने का प्रश्न ही उत्पन्न नहीं होता है। प्रार्थी ने 240 दिन कार्य नहीं किया। जिरह में कहा

है कि बैंक टॉयलेट में कोई परमानेट कर्मचारी सफाई के लिए नियुक्त नहीं था। जो आता था उससे करवा लेते थे। यह कहना गलत है कि प्रदीप ने बैंक में सफाई का काम लगातार किया हो। वह सप्ताह में एक-दो बार आता था। इस प्रकार दो-तीन महीने काम किया होगा। बैंक हैड ऑफिस थार्ड पार्ट टाइम सफाई कर्मचारी देते हैं तो रखा जाता है और उसका पदनाम भी अंशकालीन सफाई कर्मचारी होता है। यह सही है कि प्रार्थी ने जितने दिन काम किया उसका उसे भुगतान रिकार्ड के अनुसार कर दिया गया है। यह कहना गलत है कि प्रार्थी ने बैंक में स्थाई किये जाने की मांग की हो। इस बजाह से बैंक ने हटाया हो। यह कहना गलत है कि प्रदीप से पहले उसकी माता मुन्ही देवी बैंक में काम करती थी। यह कहना गलत है कि प्रदीप ने 17.1.07 से 14.8.07 तक लगातार बैंक में काम किया हो।

9. उपरोक्त साक्ष्य विवेचन के अनुसार प्रार्थी का यह कहना है कि उसने दि. 17.1.07 से 14.8.07 तक लगातार अप्रार्थी संस्थान में सफाई कर्मचारी की हैसियत से कार्य किया परन्तु इस संबंध में प्रार्थी की ओर से कोई भी ऐसी दस्तावेजी साक्ष्य प्रस्तुत नहीं हुई है जिसके आधार पर यह माना जा सके कि प्रार्थी को अप्रार्थी संस्थान में पूर्ण कालिक अथवा अंशकालीन नियुक्ति दी गयी हो तथा उसने दि. 17.1.07 से 14.8.07 तक लगातार कार्य किया हो। प्रार्थी पर यह साबित करने का भार था कि उसने अप्रार्थी संस्थान में 240 दिन अथवा इससे अधिक एक कैलेंडर वर्ष में कार्य किया है, परन्तु इस संबंध में प्रार्थी ने जिरह में यह कहा है कि उपस्थिति रजिस्टर में हस्ताक्षर नहीं करता था मेरे पास ऐसा कोई कागज नहीं है जो यह बताता हो कि बैंक में काम किया था। प्रार्थी ने जिरह में यह कहा कि प्रतिदिन वाउचर पर हाजरी होती थी। वाउचर पेश किये हैं परन्तु फिर यह कहा कि वाउचर पत्रावली पर नहीं है। जिन बैंक मैनेजर द्वारा उसे रखने की बात प्रार्थी ने बतायी है उन बैंक मैनेजर का नाम अथवा उनके आद बैंक में अन्य बैंक मैनेजर जो उस अवधि में लगे उनके नाम अथवा जिन बैंक मैनेजर द्वारा सेवामुक्त करना प्रार्थी कहता है उनमें से किसी भी बैंक मैनेजर का नाम प्रार्थी ने जिरह में नहीं बताया है। सेवा पृथक जिस तारीख को करना प्रार्थी ने कहा है, उसके पश्चात् बैंक में कोई अर्जी भी नहीं देना प्रार्थी ने माना है। अप्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टिंत 2002 लैब आई सी 987 में माननीय सर्वोच्च न्यायालय द्वारा निम्नलिखित प्रकार से अवधारित किया गया है:-

“Industrial Disputes Act (14 of 1947). Ss./25F.10-Retrenchment Compensation-Termination of services without payment of-Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding; his termination-Claim denied by Management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary or wages or record of appointment, Filing of an affidavit by workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination.”

10. प्रार्थी की ओर से उपरोक्त साक्ष्य विवेचन के अनुसार अपने क्लेम के समर्थन में न तो उपस्थिति बाबत कोई रिकार्ड प्रस्तुत किया गया है न ही वेतन भुगतान संबंधी कोई दस्तावेज प्रस्तुत किये गये हैं न ही

नियुक्ति बाबत कोई दस्तावेज प्रस्तुत किया गया है एवं न ही कोई ऐसे दस्तावेज तलब करवाये गये हैं जिनसे यह साबित होता हो कि प्रार्थी ने अप्रार्थी संस्थान में नियुक्ति प्राप्त की व उसके पश्चात् अप्रार्थी संस्थान में एक वर्ष में 240 दिन या अधिक कार्य किया। इसके अलावा प्रार्थी ने स्वयं अपने क्लेम में और शपथ पत्र में यह कहा है कि उसने दि. 17.1.07 से 14.8.07 तक लगातार बैंक में काम किया। उक्त अवधि स्वयं प्रार्थी के कथनानुसार करीब सात माह होती है जो 240 दिन से कम होती है। अतः स्वयं प्रार्थी के कथनों से भी 240 दिन कार्य करना साबित नहीं होता है। इसके अलावा उपरोक्त विवेचन के अनुसार प्रार्थी की ओर से ऐसी कोई दस्तावेजी साक्ष्य भी प्रस्तुत नहीं की गयी है जिसके आधार पर यह माना जा सके कि उसे अप्रार्थी संस्थान द्वारा नियुक्त किया गया हो और उसने 240 दिन या इससे अधिक कार्य किया हो। अतः जब प्रार्थी द्वारा यह साबित नहीं किया गया है कि उसे अप्रार्थी संस्थान द्वारा नियुक्ति दी गयी तथा उसने अप्रार्थी संस्थान में 240 दिन या इससे अधिक काम किया तो प्रार्थी का क्लेम उसके पक्ष में साबित होना नहीं माना जा सकता। अतः तदनुसार विवाद का उत्तर दिया जाना न्यायोचित है।

आदेश

फलतः प्रस्तुत विवाद का उत्तर इस प्रकार से दिया जाता है कि प्रार्थी श्रमिक श्री प्रदीप ने अप्रार्थी प्रबंधन यूको बैंक, डी.ए.वी. कॉलेज, अजमेर द्वारा नियुक्ति दिया जाना तथा अप्रार्थी संस्थान में दि. 17.1.07 से दि. 14.8.07 तक कार्य करना प्रमाणित नहीं किया है। अतः प्रार्थी श्रमिक को दि. 14.8.07 को प्रबंधन यूको बैंक, डी.ए.वी. कॉलेज, अजमेर द्वारा सेवामुक्त किया जाना भी साबित नहीं होता है। अतः श्रमिक प्रदीप अप्रार्थी प्रबंधन, यूको बैंक से अथवा इस न्यायालय से कोई राहत पाने का अधिकारी नहीं है।

मनोज कुमार व्यास, न्यायाधीश

नई दिल्ली, 25 अक्टूबर, 2012

का.आ.3457.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंध-तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट [संदर्भ संख्या सीजीआईटीए/2/2011आईटीसी 27/2010(ओलड)] को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल-41011/78/2010-आईआर (बी-1)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 25th October, 2012

S.O. 3457.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award [Ref. 2/2011, ITC 27/2010(Old)] of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Western

Railway and their workmen, received by the Central Government on 25-10-2012.

[No. L-41011/78/2010-IR(B-1)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present

Binay Kumar Sinha,
Presiding Officer,
CGIT-cum Labour Court,
Ahmedabad, Dated 18th October, 2012

Reference: CGITA of 2/2011

Reference: ITC. 27/2010 (Old)

1. General Manager,
Western Railway,
Churchgate, Mumbai.
2. Divisional Railway Manager,
Western Railway, Kothi Compound,
Rajkot.
3. Divisional Railway Manager,
Western Railway, Pratapnagar,
Baroda.
4. Divisional Railway Manager,
Western Railway, Teenbatti,
Ratlam.
5. Divisional Railway Manager,
Western Railway, Nr. Chamunda-
Bridge, Asarwa, Ahmedabad.
6. Divisional Railway Manager,
Western Railway, Bhavnagar,
Bhavnagar.
7. Chief Works Manager,
Western Railway,
Lower Parale, Mumbai.
8. Chief Works Manager,
Western Railway,
LCW Workshop,
Dahod (Gujarat).
9. Chief Works Manager,
Western Railway,
Engineering Workshop,
Sabarmati, Ahmedabad.
10. The Works Manager,
Signal Workshop,
Western Railway, D-Cabin,
Sabarmati, Ahmedabad.

.....First Party

Versus

Paschim Railway Karmachari Parishad,
28/B. Narayan Park,
B/h. Chandkheda Railway Station,
Sabarmati, Ahmedabad.Second Party

For the 1st parties : Shri H.B. Shah, Advocate

For the second party : Shri Raghuvir Singh Sisodiya,
President, P.R.K.P.

AWARD

The Central Government/Government of India/Ministry of Labour/Shram Mantralay, New Delhi, by its order [No. 41011/78/2010 IR (B-1)] dated 23.09.2010, considering an Industrial Dispute exists between employers in relation to the management of Western Railway Churchgate, and their workman, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat), formulating the terms of reference under the schedule as follows:-

SCHEDULE

“Whether the demand of General Secretary, Paschim Railway Karmachari Parishad in asking payment of bonus by cheque/Bank for those salary is being paid through cheque/Bank and in the cash for those whose salary is being paid in cash is legal and justified? If yes, what relief the union concerned is entitled?”

2. The notices were issued to the parties for filing statement of claim and written statements. 1st party No.9 appeared and executed vakilpatra in favour of Shri H.B. Shah, Rly. Advocate on 6.04.2011 at Ext. 15. The second party union through the President, P.R.K.P. appeared and filed statement of claim on 12.09.2011 at Ext. 16 and also filed an application u/s. 10 (4) of the I.D.Act 1947 at Ext. 17 seeking for interim relief for maintaining status quo order by the 1st parties and their agents regarding payment of productivity linked bonus for the year 2009-10. Upon Ext. 17 a show-cause notices were issued to the 1st parties *vide* Ex. 19. Another vakilpatra was executed by the 1st parties No.4 in favour of Shri H.B. Shah, Rly. Advocate on 12.09.2011 at Ext. 20. But no cause was shown in response to show cause notices by any of the 1st parties. Then *vide* Ext. 21 interim order dated 27.09.2011 was passed directing the 1st parties to maintain status quo of the mode of payment of productivity linked bonus for the financial year 2009-2010 as per circular order dated 7.10.2010 and the 1st parties were further directed to maintain such status quo until further order. Thereafter on 14.12.2011 written reply at Ext. 22 filed on behalf of Divisional Personal Officer, Ahmedabad, Western Railway and its copy received by the 2nd party union on 15.12.2011. It may be noted here that the 1st party

challenged the interim order dated 27.09.2011 before the Hon'ble High Court in S.C.A. No. 14840 of 2001. However the said S.C.A. was disposed of by the petitioner (1st parties) as permission to withdraw the petition was granted *vide* oral order dated 07.10.2011 of the Hon'ble Court. The P.R.K.P. (union) filed Misc. Application for contempt No. 2737 of 2011 against the Union of India and 8 others on account of alleged breach of non-compliance of the order dated 27.09.2011 passed by this Tribunal-cum-Labour Court. However the Hon'ble court has been pleased to observe that the order dated 7.10.2011 on the basis of which (C.G.I.T.) passed the order, has been modified by the Railway Board *vide* order dated 8.10.2010 whereby mode of payment of bonus in cash was continued and that there was no complaint by any of the employee that payment has not been received. It was observed by the Hon'ble Court that the modality of the payment at large is yet to be finally considered by the tribunal (C.G. I.T-cum-Labour Court, Ahmedabad) in the reference. So the Hon'ble Court did not initiate proceedings under the contempt of court Act. It was observed also that the petitioner (P.R.K.P.) may ventilate its grievance before the tribunal, if otherwise permissible in law.

3. It may be noted here that the 2nd party union (P.R.K.P.) again filed interim relief application u/s. 10 (4) of the I.D. Act on 12.09.2012 at Ext. 26 praying therein for restraining the 1st parties from making the payment of bonus in cash on the eve of Diwali festival for the year 2010-2011 by also attaching with the copy of order of the Hon'ble Court dated 19.03.2010 passed in S.C.A. No. 12741 of 2009 (P.R.K.P v/s Union of India & 10 others) wherein the union had raised grievance for the payment of salary by cheque who wants to accept the salary by cheque and that any of Group C or D employees opts for cash payment salary be paid by cash etc. As per order of the Hon'ble Court grievance raised does not survive and so the S.C.A. was disposed of. The 1st party (Divisional Personal Officer, Ahmedabad, Western Railway filed written reply at Ext. 27 to the application of the Union (second party) at Ext. 26. Those Ext. 26 & 27 were kept pending as parties intended for adjudication of the reference case as per terms of reference on priority basis. .

4. The case of the union (second party) as per statement of claim (Ext. 16) is that the union has raised an Industrial Dispute against the 1st parties employer requesting them to make payment of bonus by the existing policy prevailing in the western railway and demanding to pay the bonus by account payee cheque in the name of workman, so that the workman can get the legitimate right at the time of Diwali festival. The demand of the union is based on the circular issued by the first parties employer issued from time to time. Further case is that the union has filed SCA No. 12741/ 2009 before the Hon'ble High Court of Gujarat and that the Hon'ble Court *vide* its order dated 19.03.2010 passed order directing the employer to make the payment of salary as

per their demand. Thereafter the 1st party employer issued circular *vide* order dated 26.09.2008 by Shri N.H. Dave Dy C.P.O (Pay Commission) for G.M. (Estt.) requesting to all the concerned department that payment is to be made in cash only to those workman who gives the undertaking and request the department to make their payment in cash except those all workman will be made payment by account payee cheque. Further case is that the aforesaid order of the 1st party dated 26.09.2008 was modified by the Railway Board by its circular/order dated 07.10.2010 and subsequent order dated 8.10.2010 for payment of the workman of PLB in cash. It has been contended that the action of the Railway Board is totally illegal, contrary to the order passed by the Hon'ble High Court of Gujarat and earlier circular issued by the 1st party employer from time to time. Further case is that there are some union representatives who are authorisedly collecting their fund at the time of payment of salary of the workman such elements can be prevented from such activities by passing order to make payment by account payee cheque in the name of employee. Further case is that workman working in the different division have given their written option to make payment by cheque but still such workman are made payment by cash and that the demand raised by the union is justified because if the authority accepts it, there will be no financial constraint to the 1st parties and if payment of bonus is continued to be disbursed in cash, there will be extra financial burden upon the first parties. On these scores prayer has been made for granting the relief referred as per terms of reference by allowing the reference and for any other relief to which the union is found entitled.

5. On behalf of the 1st party No.5 (D.R.M, Ahmedabad) affidavit in reply at Ext. 22 has been filed by Shri R.S. Bhuria, the Divisional Personal Officer, Ahmedabad, Western Railway to the statement of claim of the union contending therein that the first parties are the various Divisions under Western Railway, the Railway Board, Ministry of Railway, Govt. of India and that mode and method of payment of productivity linked bonus (PLB) in the financial year 2009-2010 implementing the Board's letter dated 8.10.2010 and withdrawing para-5 of the Board's letter dated 7.10.2010 and that this tribunal though granted status-quo on payment of bonus but as per Board's letter dated 8.10.2010 distribution of P.L.B. was implemented in cash for the financial year 2009-10. Further contention is that there was no complaints from any workman in getting bonus and that the order passed by the Hon'ble Gujarat High Court in SCA 12741/2009 is relating to the salary and not for bonus. The first party is subordinate to the Railway Board and is bound by all instructions issued by it. The second party is challenging the virus of the Board's letter dated 07.10.2010 and 8.10.2010 without making the Railway Board as one of the first parties. If the second party was aggrieved by the action of the Railway Board, the second party ought to have make a representation to the Railway Board. It is

further case of the 1st party No. 5 that since para-5 of the Board's letter dated 07.10.2010 was treated to be withdrawn by modified order dated 08.10.2010, the payment of bonus has been made from 14th to 20th October, 2010. Therefore both the Board's letter do not survive for further years regarding mode of payment of PLB and that every year before Dussera a separate letter is issued by the Railway Board for payment of PLB and the practice is payment of bonus in cash. Further contention is that the Ministry of Railway/Railway Board has issued a letter dated 30.09.2011 for payment of PLB for the year 2010-2011 and its copy annexed as Annexure-A. So when Board's letter dated 07.10.2010 and 08.10.2010 are now not useful for future year, the granting of status-quo order dated 27.09.2011 is without jurisdiction. The reliance placed by the second party on the order passed by the Hon'ble High Court of Gujarat in SCA 12741 of 2009 pertaining to mode of payment of salary is not applicable towards payment of PLB and that Board's letter dated 26.09.2008 regarding 6th pay commission is not concerned with the present claim of the second party. Further contention is that the second party is not recognized union by the 1st party, therefore the second party (P.R.K.P.) is not proper party to raise the Industrial Dispute. On these grounds prayer made to vacate the order of, status-quo dated 27.09.2011.

6. In view of the pleadings of the parties, following issues are taken up for discussions and consideration and arriving at decision in this case:-

ISSUES

(I) Whether the reference made by the second party union (P.R.K.P.) is maintainable?

(II) Have the second party union valid cause of action to raise the Industrial Dispute in this case?

(III) Whether the case suffered by non-joinder of Railway Board as one of the 1st party to this case by the second party union?

(IV) Whether the demand of the union Paschim Railway Karmachari Parishad in asking payment of productivity linked bonus by the 1st party by account payee cheque in the Bank Accounts for those workman/employee whose salary is being paid through cheque/Bank and is cash for those whose salary is being paid in cash is legal and justified?

(V) What relief the union concerned is entitled to?

(VI) What order are to be passed?

7. ISSUE NO. IV

The s.p. (union) had lead oral and documentary evidence for supporting its statement of claim in this case. Whereas the 1st party has examined one witness at Ext. 34 to support stand taken in the w.s. Shri R.S. Sisodiya, President of P.R.K.P. (union) filed his affidavit in lieu of examination in

chief at Ext. 31 and he was cross-examined by Shri H.B. Shah Rly Advocate. The second party have submitted as many as 37 documents on 25.09.2012 under a list at Ext. 30 and the documents have been accepted as Ext. 30/1 to 30/37. The s.p. have also submitted two documents on 05.10.2012 under a list Ext. 33 and the documents letter dated 22/09/2009 on behalf of G.M. (E) W.Rly to A.L.C. A (C) and letter dated 26.09.2008 of H.Q Office, Churchgate Mumbai to all concerned in Western Rly. Zone have been marked Ext. 33/1 and 33/2 respectively. The s.p. have also submitted the copy of notification/order dated 07.10.2010 of Railway Board on the subject payment of PLB to all eligible Non-Gazetted Railway employees for the financial year 2009-2010 and modified letter of Railway Board dated 08.10.2010 as to withdrawing the advice given in para 5 of Board's letter dated 07.10.2010. These two letters/orders of the Railway Board has been attached with the statement of claim at Ext. 16 and interim application at Ext. 17. On the other hand the 1st party No.5 in its w.s. Ext. 22 have attached Railway Board's Notification/order dated 30.09.2011 on the subject of payment of PLB for the financial year 2010-2011.

8. The witness of s.p. in his evidence has supported the Railway Board's advice under the circular No. 147/2010 regarding mode of payment of PLB as per para-5- "It is also advised that the admissible amount in respect of employees who receive their salary in Bank accounts be credited to their accounts unless such employees give an option to receive the PLB in cash. The s.p. witness in his evidence at para 4 has stated that the office bearers of the registered trade union functioning in the Western Rly. Zone (1st party) have insisted to the officers of the 1st party employer and because of their insistence/pressure the officers of the railway have changed the circular dated 07.10.2010 by issue new circular dated 08.10.2010 bearing circular No. 148/2010 and that the 1st party employer has intentionally and deliberately modified the earlier circular and the 1st party employer have made the payment of bonus in cash only and that the 1st party employer is acting under the pressure of the office bearers of Registered trade union functioning in the establishment of the Western Railway. In support of such evidence document at Ext. 30/6 has been filed which is copy of minutes of meeting dated 28.09.2011 held in between Rly administration of the 1st party and representatives of the recognized union W.R.E.U. & WRMS by which the view of those trade union was given much weightage and the views and grievance of other trade union/community/group were ignored regarding mode of payment of bonus. The witness of the second party at para 4 of Ext. 31 has also ventilated the grievance of several workmen working in class IV category who raised grievance as to payment of PLB by way of account payee cheque/ ECS but despite their grievance the 1st party employer compelled them to receive the PLB in cash only. His such evidence finds support from Ext. 30/8 which is representation of employees of Engg. Deptt., Ahmedabad

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Division dated 07.10.2010 to DRM (pay bill) ADI on the subject of payment of PLB for the year 2009- 2010 through ECS in our salary Account of bank in which there are 40 signatories with names. Whereas the admitted position in that PLB for the year 2009-2010 has been distributed in cash the grievances of large number of employee was ignored even giving option for payment through ECS in their Bank A/c. It may be said here that as per version of 1st party No. 5 in w.s. (Ext 22) at para 10 (Last) that the payment of PLB has been made from 14th to 20th October 2010 as per circular dated 08.10.2010 and the interim order to maintain status-quo was passed at Ext. 21 on 27.09.2011, after distribution of PLB for the year 2009-2010, by the 1st party employer. But that interim order has not come to an end rather it remained in force until further order and until the same is vacated by this tribunal or the same is set aside by the Hon'ble High Court in any SCA. It is admitted position that though the 1st party challenged the said interim status-quo order before the Hon'ble High Court but the 1st party with drew the SCA No. 14840 of 2011 which is mentioned in the order dated 07.10.2011 of the Hon'ble Court disposing of the SCA as withdrawn.

9. In the evidence of s.p. witness at para 6 it has come that Railway Board has issued another circular dated 30.09.2011 by circular No. 134/2011 wherein the 1st party employer (Western Railway) has decided to make payment in cash only. This circular has also been filed by 1st party No.5 attaching with its w.s. at Ext. 22. It has been further stated in evidence by the s.p. witness at para 5 that if payment of PLB is made by A/c payee cheque or by ECB in employees respective Bank A/c, it will not adversely affect to first party employer. In this connection the order passed by the Hon'ble High Court of Gujarat in SCA No. 12741 of 2009 dated 19.03.2010 is that.... However it is open for the each employee that if employee wants to accept the salary by cheque, he should have to mention or give undertaking to the authority for the same or if employee wants salary in cash, then necessary option is to be filled up by the concern employee. Accordingly, payment will be made by the payment Authority.

10. It is not disputed that policy maker for PLB is Railway Board for every year for giving PLB to Non-gazetted Employees and such circular every years is sent to Zonal Head Office for circulation and implementation. So the General Manager of Railway Zone is main implementing authority through different Division and workshops comes under particular zone.

Likewise General Manager, Churchgate, Mumbai (1st party No.1) was also to implement circulars of PLB in the different Division of W. Rly. It has been argued by Shri H.B. Shah, Advocate that the G.M. has to simply abide with circular of Railway Board without any deviation. On the other hand it has been argued by the s.p. union that the main implementing agency of the circular is General Manager

of different Zone and regarding distribution of PLB in the different Division the 1st party No.1 (G.M. Western Railway) and its officers have consulted with the representative of only recognized union and voice of other trade unions were suppressed as per Ext. 30/6 and 30/8. It has been further pointed out by the s.p. union that as per Ext. 33/1 the General Manager (E) Western Railway *vide* letter dated 22.09.2009 had corresponded to the ALC (Central) Ahmedabad, that necessary action for the mode of payment of productivity linked bonus is being taken as per Rly Board's orders *vide* letter dated 26.09.2008. The s.p. also pointed towards letter dated 26.09.2008 of Headquarter, Churchgate, Mumbai W. Rly wherein it had been taken decision by the G.M. W. Rly for payment of PLB and arrears payment to be made in cash only for those whose salary is in cash. The grievance of the s.p. union is only with respect to mode of distribution of PLB in Western Railway Zone since voices have been raised for payment by A/c cheque or by e.c.s. in Bank A/c of employees except those employees in cash who get salary in cash. The s.p. union has highlighted through the evidence of 1st party witness Shri Gopal at Ext. 34 who is a class III employee and the member of trade union Western Railway Mazdoor Sangh, has admitted during cross-exam *vide* para 31 that in the Ahmedabad Division the DPC cashier when was going to distribute PLB in cash it was lotted by the miscreants so the defective system of payment of PLB in Western Railway zone has been shown through the evidence of 1st party witness. More so, the witness Shri Gopal who is class III employee and attached to a trade union cannot be said to be an independent witness to represent DRM Ahmedabad (1st party No.5) whereas w.s. was filed by Shri R.S. Bhuria, Divisional Personal Officer on behalf of 1st party No.5. More so, the claim of s.p. union that in Baroda Division PLB was distributed by A/c payee cheques or CSE system has not been emphatically denied by witness of management at Ext. 34. The 1st party witness *vide* Ext. 34 during cross by the s.p. union he stated at para 30 in perplexed manner so far as he understand distribution of PLB in cash system is good in comparison to payment through Bank system. He was shown Ext. 30/4, 30/5 regarding incurring heavy expayees but the 1st party in managing DPC and even then he being attached to trade union stated at para 38 that payment *vide* A/c Payee cheque or e.c.s. is not good method for PLB but he admitted to the court question that he get salary through Bank. That means his monthly salary is credited in his Bank Account. The s.p. (union) *vide* Ext. 30/3, 30/4, 30/5 has shown that the 1st party of Western Railway incurred heavy expenses by way of payment of honorarium. *Vide* EXT. 30/4 and 30/5 heavy expenditure used to be incurred by Bhavnagar Division and Rajkot Division of Western Railway has been shown by procuring information through RTI application seeking information.

11. Form the oral and documentary evidence scrutinized above such relevant evidence and circumstances have emerged so far as distribution of annual PLB in different Divisions of Western Railway H.O. Churchgate, Mumbai that in spite of facing adverse situation even of loss of the heavy amount of PLB from the PCB and even incurring heavy expenses in distribution of PLB in the Western Railway of the 1st party employer and even filing of request letter/representation by several number of employees to make payment of bonus through Bank A/c or ECS the management of the 1st party Western Railway on the pressure of two trade union are insisting on payment in cash of PLB by ignoring their own letter dated 22.09.2009 address to the ALC Central (Ext. 33/1) and letter dated 26.09.2008 Ext. 33/2 only for those employee whose salary are paid in cash and for the others through Bank who get salary through Bank/ECS.

12. Such argument have been advanced by Shri H.B. Shah, Advocate for the 1st party (Western Railway) that the reference does not fall under the schedule rather demand for payment of bonus through a particular mode is residuary matter and that PLB is a policy matter of Indian Railway/Railway Board and that different Zonal Head Offices of Railway through General Manager are only to implement the policy decision. On the other hand Shri R.S. Sisodia for the s.p. union has argued that the General Manager of Zone on receipt of circular order of Railway Board are competent and having every power to implement distribution of PLB for a particular year by selecting the mode of distribution on the option of the employee which is evident from the G.M. Western Railway letter to ALC (Ext. 33/1) and G.M. letter (Ext. 33/2). His further argument is that the Railway Administration of Western Railway against whom dispute has been raised by the union will not be burdened any financial constraint if PLB payment is generally made by Account payee cheque or by ECS except such employee who get salary in cash by cash payment of PLB. The arguments advanced on behalf of the union (s.p.) are tenable and are based on relevant evidence as discussed above. While the argument advanced on behalf of the 1st party is merely on technical aspect which has nothing to do in this case since the dispute has been raised against the management of western railway and not against other railway zones or even against the Railway Board's policy as to payment of PLB and so this dispute is not and cannot be treated as national issue to be decided by the National Industrial Tribunal. More so, the appropriate Govt./Central Govt./Ministry of Labour has itself consider a dispute exists between the management of Western Railway, Churchgate and their workmen so referred the dispute for adjudication to this tribunal. In such view of the matter such argument on behalf of the 1st party that this tribunal has no jurisdiction to decide the dispute and that due to non-joinder of Railway Board as party to the case, the reference is bad, are not at all tenable.

13. Thus as per discussion and consideration made above, I am of the considered view that the demand raised by the s.p. union against the 1st party employer is just and proper in asking payment of productivity linked bonus by check/Bank for those employees salary is being paid by cheque/Bank and in cash for those whose salary is being paid in cash. Thus this issue is decided in favour of the second party.

14. ISSUE NO. I, II, III

In view of the findings given in the foregoing paras while deciding issue No. IV, I further find and hold that the reference made by the second party (union PRKP) is maintainable and that the union has valid cause of action to raise dispute against the employers of the 1st party No. 1 to 10. I further find and hold that this reference case is not suffered due to non-joinder of Railway Board because it is not necessary party to the reference as already considered by the appropriate Govt. making reference for adjudication and also for the reason that the 1st party have not challenged the validity of the reference order before the Hon'ble High Court as clearly admitted by the witness of the 1st party No. 5 at Ext. 34.

15. ISSUE NO. V

As per findings in the foregoing deciding issues No. I, II, III & IV, I am of the considered opinion and therefore find and hold that the second party union is entitled to the only relief prayed for in their charter of single demand, made in the statement of claim (Ext. 16) and also referred by the appropriate Govt. in reference order Ext. 1 and decided by this tribunal giving findings at para No. 13 deciding issue No. IV.

16. ISSUE NO. VI

As per findings above this reference is allowed. However no order as to cost. Following orders are passed:

1. The management of Western Railway (1st party No. 1 to 10) are directed to make arrangement for payment of productivity linked bonus to their employee either by account payee cheque or E.C.S. for those employee salary is being paid through account payee cheque or E.C.S. and in cash for those whose salary is being paid in cash.

2. Those employees whose salary is being paid in cash but if exercise option for payment of PLB in their Bank Account then by account payee cheque or by E.C.S.

3. The first party are directed to comply with the order accordingly receiving the circulars henceforth annually for ensuring implementation in the Western Railway Divisions in accordance with the above directions.

4. Since the award is being made in favour of the second party union after final adjudication on the modality of the payment of PLB in Western Railway Zone, so now there is no need for continuance of the interim relief order dated

27.09.2011 as per Ext. 21 and the interim order is hereby vacated/recalled.

5. The application dated 12.09.2012 filed by the s.p. union at Ext. 26 praying for interim relief against the 1st party and its reply by the 1st party at Ext. 27 which is dated 18.09.2012 are disposed of since there is no need for passing separate order.

6. The application dated 07.02.2012 filed by the second party union at Ext. 24 against the 1st party No. 1 to 9 for initiating contempt proceeding for violating the interim order dated 27.09.2011 (Ext.21) is held infructuous since the interim order dated 27.09.2011 has been recalled/vacated at order No.4 and also considering that the first party have implemented the distribution of PLB according to modified circular dated 08.10.2010 much prior to passing of the interim order dated 27.09.2010 at Ext. 21.

This is my award.

BINAY KUMAR SINHA, Presiding Officer
नई दिल्ली, 26 अक्टूबर, 2012

का.आ.3458.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर, के पंचाट (संदर्भ संख्या 194/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.10.2012 को प्राप्त हुआ था।

[सं. एल -12012/306/2001-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 26th October, 2012

S.O. 3458.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 194/2001) of the Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, which was received by the Central Government on 26-10-2012.

[No. L-12012/306/2001-IR (B-I)]

RAMESH SINGH, Desk Officer.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/194/2001

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Ramkaran Daahima,
S/o Shri Ramlal Daahima,
R/o Survahara Colony,

Nasrullahganj,
Distt. Sehore (MP)

... Workman

Versus

The Assistant General Manager,
State Bank of India, Zonal Office,
Hamidia Road,
Bhopal (MP)

... Management

AWARD

Passed on this 10th day of October, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-12012/306/2001-IR(B-I) dated 11-12-2001 has referred the following dispute for adjudication this by tribunal:—

“Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in not considering Sri Ramkaran Daahima S/o Ramlal Daahima for appointment even after calling him for interview is justified? If not, what relief the workman is entitled?”

2. The case of the workman in short is that the workman Shri Ramkaran Daahima was engaged by the management Bank at Nasrullahganj Branch in the year 1985 for 55 days and in the year 1986 for 29 days. He was called for interview *vide* order No. 3691 dated 30-1-1997 and was selected for appointment in the sub-staff cadre against permanent post *vide* order dated 21-9-99. He was directed to deposit the documents in the office of Bhopal which was deposited by him on 20-10-99 but he was not appointed by the management Bank. It is submitted that the management be directed to appoint the workman on the basis of the said interview.

3. The management appeared and filed Written Statement. The case of the management, *inter alia*, is that admittedly the workman had worked for 55 days during the period of 1985 and 29 days from January 1986 to May 1986 *i.e.* total 84 days as purely daily rated casual employee. The management Bank and SBI Staff Federation entered into various agreements. According to these settlements, the interview was called for selection and a penal was prepared by the Bank in accordance with the settlement for giving chance for permanent appointment in the Bank. Shri Ramkaran Daahima also submitted his application in accordance with the settlement and he was called for interview. He belonged to ST category. He was interviewed on 15-2-97 and was empanelled in the selection list. He was offered an appointment *vide* letter dated 21-9-99. He was advised to submit his certificates. On verification of the certificates, he was found minor at the time of initial temporary appointment in the year 1985 and 1986. In terms of settlement arrived between the management Bank and the Federation, only those ex-temporary daily rated employees were to be considered who were within the age-

limit of 18 to 26 years at the time of temporary initial appointment. As such the workman was not eligible to be considered for permanent appointment in the services of the Bank. It is submitted that the workman is not entitled for any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

I. Whether the action of the management in not considering Shri Ramkaran Daahima for appointment is justified?

II. To what relief the workman is entitled for?

5. During the course of proceeding, the workman Shri Ramkaran Daahima became absent. As such the proceeding proceeded ex parte against him on 23-12-2010.

6. ISSUE NO. I

The workman has filed documents in the case which are admitted by the management and are marked as Exhibit W II to Exhibit W/4. Exhibit W/4 is the interview letter dated 30-1-1997 whereby he was called for interview. Exhibit W/2 is the letter dated 21-9-99 whereby the workman was directed to deposit documents till 20-10-99. Exhibit W/3 is the certificate of temporary service. This certificate shows that he worked on temporary basis in the year 1985 and 1986 for the total period of 84 days. These all facts are admitted facts. Exhibit W/4 is the copy of the mark sheet of Shri Ramkaran Daahima. The mark sheet shows that his date of birth is 1-7-1969. This clearly shows that in the year 1985 and 1986, he was absent 16 or 17 years. This shows that at the time of initial temporary appointment he was minor. It is argued on behalf of the management that as per settlement, he was not eligible for appointment for permanent post because he was minor.

7. The management has also adduced oral and documentary evidence in the case. The management witness Shri Kishanlal Murjani is working as Branch Manager, Nasrullahganj Branch. He has supported the case of the management. He has stated that Shri Ramkaran Daahima was selected and was offered appointment vide letter 21-9-99 (Exhibit W/2). He was found minor at the time of initial temporary appointment. As such he was not eligible for permanent appointment in the Bank in terms of settlement. His evidence is unrebuted. Moreover his evidence is in corroboration with the documents filed by the workman in the case. His evidence clearly shows that Shri Daahima was minor at the time of temporary engagement in the Bank.

8. Now the important point is that whether in any terms and condition that if the ex-casual employee/temporary was minor at the time of initial appointment then case is not

to be considered for permanent appointment in the Bank. The management has filed the settlements. Para-4 of the settlement dated 17-11-1987 runs as follows:—

“Above temporary employees would have been in the Bank's temporary service anytime during 1-7-1975 to 31-12-1987 or any stage on the date of initial temporary appointment, besides fulfilling the other prescribed eligibility criteria for appointment in the subordinate cadre subject to clause 4(a) and (b) Infra.”

This clearly shows that the ex-casual employee/temporary employee should be within 18 to 26 years of age at the time of initial temporary appointment. This shows that Shri Daahima was not eligible for permanent appointment in the Bank in terms of settlement. Thus this issue is decided against the workman Shri Ramkaran Daahima and in favour of the management.

9. ISSUE NO. II

On the basis of the discussion made above, it is clear that the action of the management is justified as Shri Daahima was not eligible in terms of settlement arrived between the management Bank and Staff Federation. He is not entitled to any relief. The reference is, accordingly, answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ.3459.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम स्थायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 50/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/10/2012 को प्राप्त हुआ था।

[सं. एल-12012/58/2008-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 26th October, 2012

S.O. 3459.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 50/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 26-10-2012.

[No. L-12012/58/2008-IR (B-I)]

RAMESH SINGH, Desk Officer

4292 GI/12-8

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR**

Present:

Shri J. Srivastava,
Presiding Officer, C.G. I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 50/2008**Date of Passing Award—10th October, 2012****Between:**

The Branch Manager,
State Bank of India, Kupari Branch,
At./Po. Kupari, Dist. Balasore.

...1st Party-Management.

(And)

Their workman Sri Duryodhan Pusty,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar. (Orissa)

...2nd Party-Workman.

Appearances:

Shri Alok Das,
Authorized Representative

...For the 1st Party-
Management.

None

...For the 2nd Party-
Workman.**AWARD**

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India, Kupari Branch and their workman under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/58/2008-IR (B-1), dated 10.07.2008 to this Tribunal for adjudication to the following effect:

“Whether the action of the management of State Bank of India, Kupari Branch, Kupari in terminating the services of Sri Duryodhan Pusty, ex-workman w.e.f. 30.9.2004, is legal and justified? If not, what relief the workman is entitled to?”

2. The 2nd Party-Workman has filed his-statement of claim alleging that he had joined his services as a Messenger on 2nd March, 1987 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30.9.2004 by the 1st Party-

Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 28.02.2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30.9.2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived inasmuch as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 109 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 2nd March, 1987 and he was discontinued from service on 30.9.2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1993. But he was

not found successful, hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble, High Court of Orissa by a common order dated 15.5.1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Pusty had been discontinued much prior to the lapse of the panel in the year 1997 his claim has become stale by raising the dispute after thirteen years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:-

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for more than 240 days as enumerated under Section 25-F of the Industrial Disputes Act?

3. Whether the action of the Management of State Bank of India, Kupari Branch, Kupari in terminating services of Shri Duryodhan Pusty w.e.f. 30.9.2004 is, fair, legal and justified?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Raghunath Rout as M.W. 1 and filed documents marked as Ext.- A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO.1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case -

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 109 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO.2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 2nd March, 1987 and worked till 30.9.2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Raghunath Rout in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies.... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30.9.2004,

but has stated that "In fact the workman left working in the Branch in 1997. "The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO.3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Kupari Branch, Kupari in terminating the services of Sri Duryodhan Pusty, ex-workman with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO.4

11. In view of the findings recorded above under Issues Nos.2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ.3460.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इन्डॉर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/

श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 19/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/333/2000-आई.आर. (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 26th October, 2012

S.O. 3460.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indore and their workman, which was received by the Central Government on 26.10.2012.

[No. L-12012/333/2000-IR (B-1)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/19/2001

Presiding Officer: SHRI MOHD. SHAKIR HASAN

Shri P.N. Sharma, Chairman,
All India State Bank of Indore Employees
Co-ordination Committee,
138, Shakti Nagar,
Jabalpur.

Workman

Versus

The General Manager (Operations),
State Bank of Indore,
Head Office, 5, Yeshwant Niwas Road,
Indore.

Management

AWARD

Passed on this 1st day of October 2012

1. The Government of India, Ministry of Labour vide its Notification No.L 12012/333/2000-IR(B-1) dated 29-12-2000 has referred the following dispute for adjudication by this tribunal:-

"Whether the action of the management of State Bank of Indore, Regional Office, Jabalpur in terminating the services of Shri Satish Kumar Garewal w.e.f. 14-7-99 is justified? If not, what relief he is entitled?"

2. The case of the Union/workman in short is that the workman Shri Satish Kumar Garewal was appointed as Part-time Peon in Narsinghpur branch of the Bank in June 1994. He worked continuously till 13-7-99. Thereafter he was terminated without notice or wages in lieu of one month notice and without payment of retrenchment compensation in violation of the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). He had worked

more than 240 days as required under Section 25-B of the Act, 1947. He was getting Rs.60 per day as wages. It is submitted that the workman be reinstated with full back wages.

3. The management appeared and filed Written Statement in the case. The case of the management, inter-alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker for supply of water for few hours in a day as and when required in Narsinghpur Branch of the Bank and was paid as agreed by him. The provision of the Section 25-F of the Act, 1947 is not applicable and therefore, the question of giving notice or payment of retrenchment compensation does not arise. It is submitted that his claim be rejected.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication:—

I. Whether the action of the management in terminating the services of Shri Satish Kumar Garewal w.e.f. 14-7-99 is justified?

II. To what relief he is entitled?

5. ISSUE NO. I

To prove the case, the workman Shri Satish Kumar Garewal has adduced his evidence. Initially in examination-in-chief he has supported his case. He has stated that he was reappointed on 12-2-1994 as temporary peon and worked continuously till 14-7-99 when he was terminated without any notice. He was getting wages on per day basis which was enhanced time to time. He was paid bonus for 1996 to 1998. He had acquired the status of permanent employee. His cross-examination shows that no appointment letter was issued nor appeared in interview nor his name was recommended by the Employment Exchange. This fact contradicts his pleading that he was appointed as temporary peon and had acquired the status of permanent employee. Lastly he has admitted in his evidence that he worked as daily wager. There is no document to prove that he worked continuously as daily wager in the period as has been stated by him. He has filed photocopies of documents but the same are not proved. Those documents are denied by the management. The then Tribunal vide order dated 12-4-07 has directed to prove those documents but the workman has failed to prove those documents. The genuineness of the documents cannot be presumed. Moreover, there are few certificates. The original certificates must be in possession of the workman but those original certificates are not filed in Court. Thus it is clear that there is no sufficient evidence to prove that the workman had worked continuously even 240 days in twelve calendar months preceding the date of termination as has been required under Section 25-B(2) of the Act, 1947.

6. On the other hand, the management has also adduced one witness. The management witness Shri Devender Singh Bhati is working as Branch Manager at Narsinghpur Branch of the Bank. He has supported the case of the workman. He has stated that he was not appointed in the Bank on any post. He has stated that he had not filed any paper to show that the alleged workman had worked in the Branch. His evidence shows that there is no paper in the Bank whereby the relationship of employer and employee between the Bank and the alleged workman was created. This shows that the provisions of the Act, 1947 are not attracted. This issue is decided against the workman and in favour of the management.

7. ISSUE NO. II

On the basis of the discussion made above, it is clear that the action of the management is justified and the alleged workman is not entitled to any relief. The reference is, accordingly, answered.

8. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3461.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या 6/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/186/2004-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3461.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2005) of the Central Government Industrial Tribunal-cum-Labour Court JAIPUR now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BANK OF BARODA and their workman, which was received by the Central Government on 12-10-2012

[No. L-12012/186/2004-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

SHRI N.K. PUROHIT, Presiding Officer

4292 GI/12-9

I.D.6/2005

Reference No. L-12012/186/2004-IR(B-II)
dated: 17.12.2004

Shri Harphool Singh Choudhary
D-125, Basant Vihar, Jhunjhunu.

Versus

Dy. General Manager,
Bank of Baroda,
Anand Bhawan, 4th Floor,
S.C. Road, Jaipur.

Present:

For the applicant Union: Sh. R.C. Joshi.
For the Non-applicant: Sh. Rupen Kala.

AWARD

27.9.2012

1. The Central Government in exercise of the powers conferred under clause (d) of sub- section 1 and 2 (A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:

"Whether the action of the management of Bank of Baroda in terminating the services of workman Shri Harphool Choudhary, clerk w.e.f. 17.11.2003 is justified? If not, what relief the workman is entitled to and from which date?"

2. The facts in brief are that the workman was working as cashier-cum-clerk with the non-applicant bank and while he was posted at Rajgarh Branch, Distt: Churu, a memo dated 11.7.96 (Ex-6) was served upon him for various misconduct committed by him during the employment; In reply (Ex-7) to the said memo he denied the charges levelled against him; Sh. S.L.Jain was appointed enquiry officer to conduct the domestic enquiry against the workman who submitted his report on 16.12.97; As per report (Ex- 8) Allegations no. 1(A), 1(B), 1(C),1(E)-(V) and Allegation no. 2 were not found proved and Allegations no. 1 (D), 1 (E) (I), 1 (E) (II), 1 (E) (III), 1(E) (IV), and 1(E) (V) and Allegation no. 3 were found proved; Thereafter, show-cause notice along with the copy of the enquiry report (Ex-8) was served upon the workman who submitted his reply (Ex-9) to the said show-cause notice (Ex-9). The disciplinary authority vide its order dated 23.9.98 proposed punishment of dismissal from bank service. The petitioner approached in the High Court against the proposed punishment. The proceedings were stayed vide order dated 28.11.98. Subsequently, the said order was vacated on 20.10.03 with the directions to the respondent therein to issue fresh notice intimating the petitioner the date and time for personal hearing. Accordingly, after affording opportunity for hearing on the proposed punishment, the disciplinary

authority vide its order dated 17.11.03 (Ex-10) inflicted punishment of dismissal from bank service. The appeal (Ex-II) filed against the said order before the appellate authority was rejected vide order dated 22.4.04 (Ex-I2).

3. The workman has averred in his claim statement that while he was posted at Rajgarh branch he had to face the wrath of the Branch Manager, Sh. Sukhdev Chaudhary and In-charge loan advance Sh. Mehtab Singh who believed that complaint against them were made by the then local M.L.A. at his instance and consequently on the basis of false complaint at the instance of them memo (Ex-6) was served upon him.

4. The workman has assailed the validity of his termination order dated 17.11.03(Ex-10) on the grounds that the allegations in the charge-sheet were vague, not related to his duties and date of incidents were not mentioned deliberately; that his representation to summon the witnesses in his defense was not allowed; that some witnesses were examined in his absence and opportunity of cross examination was not afforded to him, thus, enquiry conducted against him was not fair and proper; that finding recorded by the enquiry officers being without any basis and without any cogent evidence oral or documentary are perverse.

5. Counteracting these allegations the non-applicant in their written counter have stated that the workman was given full and fair opportunity to defend his case. He was charge-sheeted vide order dated 11.7.96 and after holding the regular enquiry as per provision of bi-partite settlement and in consonance with the principle of natural justice, the charges leveled against him were found proved. The non-applicant has denied the biasness on the part of the Branch Manager and the In-charge Loan Advance and has categorically stated that the enquiry officer gave him full opportunity to defend his case and conducted the enquiry after granting fair opportunity to the workman. The findings of the enquiry officer are based on the material on the record and the same cannot be said to be perverse.

6. In respect of preliminary issue of fairness of enquiry, following order was passed on 17.2.2006:—

"It is held that there was no denial of fair play to the workman and the enquiry conducted against him was found to be fair and proper."

7. Accordingly, learned representative on behalf of both the parties were heard on merits of the case and scanned the relevant record.

8. The learned representative on behalf of the workman contends that it is well settled that the charge sheet should be clear, definite and specific. But in present case the charge-sheet itself is defective and vague. The articles of charges are not related to his duties. Dates of the incidents have not been mentioned and the charge sheet is devoid of material particulars.

9. Per Contra, the learned representative for the non-applicant contends that the workman has given detailed reply to the show-cause notice served upon him. He did not raise any objection regarding vagueness of the charge. In the course of disciplinary proceedings even after completion of inquiry in reply to the show-cause notice such objection was not raised by him. He further submits that necessary materials, particulars in support of the allegations have been duly enumerated in the charge-sheet and the charge sheet is valid and proper. In support of his contentions he has relied on 2004 (100) FLR 258 Kerala, 2006(96) FLR 1010 Calcutta and 1991 (1) LLJ 554.

10. In respect of vagueness of charge Hon'ble Karnataka High Court in decision rendered in 1991 (1) LLJ 559 has observed as under:—

"The matter has to be looked at in a proper perspective. Has the workman suffered any prejudice? Was he in a position to understand the nature and scope of the charges? Was he in a position to meet the charges and therefore was he in a position to furnish a proper explanation? If these are answered in the affirmative, the initiation of disciplinary proceedings cannot be said to be bad."

11. In 2004 (100) FLR 238 Hon'ble Kerala High Court has observed that if the charge could be duly established it can never be said that the same is vague and general in nature. In 2003 (96) FLR 1010 Hon'ble Calcutta High Court has also observed that the particulars of a charge is necessary where without the same the delinquent does not understand what are the allegations of misconduct levelled against him.

12. The allegations in the charge sheet which have been found proved by the inquiry officer in his report are relevant and the same are reproduced below:—

Allegation 1 (D):—

13. You have taken Rs. 4000 from Mr. Manipal Singh s/o Sh. Chimno Jat, Village Khariya on pretext of including his case under Agricultural Debt Relief Scheme.

Allegation 1 (E):—

14. These are following incidents where you have taken amount as "gratification":—

(I) Rs. 2500/- from Mr. Kesar Resident Amarapura you have given false assurance to him at the time of disbursement that he need not to repay his dues on the pretext that his case will be included under Agriculture Rural Debt Relief Scheme.

(II) Rs. 2000/- from Mrs. Ankori w/o Jagna Ram Resident Amarapura at the time of disbursement of loan of buffalo.

- (III) Rs. 1100 from Sh. Veeru Ram Village-Redsana at the time of disbursement of loan of buffalo.
- (IV) Rs. 3100 from Mr. Nathu Ram s/o Sh. Debu Ram Resident of Kharia on account of disbursement of loan to his mother and Bhabhi. You have given false assurance that he need not to repay his debts on the pretext that his case will be included in Agril. Rural Debt Relief Scheme.
- (V) Rs. 1700, 2 kg ghee, 2kg meat and 4 bottles of liquor from Shri Mahendra S/o Dalla Ram Chamar Resident Khariya at the time of disbursement you have given false assurance that he need not to repay his loan on the pretext that his case will be included in Agriculture Rural Debt Relief Scheme.

Allegation (3):—

15. You have taken money from various borrowers by giving false assurance that their cases will be included in Agriculture Rural Debt Relief Scheme.

The Bank therefore charges you for:—

- (1) Charging illegal gratification
- (2) Committing acts unbecoming of Banks employee.
- (3) Committing acts prejudicial to Bank's interest.
- (4) Tarnishing Bank's image.

16. Upon perusal of the charges levelled and found to be proved it reveals that charges are not vague. The incident, involvement and alleged misconduct affecting the name and reputation of the bank have been referred. It cannot be said that the workman could not understand what the allegations of misconduct leveled against him were. Further, the workman did not raise objection in his reply to the show-cause notice that due to vagueness of the charges he was unable defend himself effectively. He did not make any grievance either before the disciplinary authority or before the appellate authority in this regard. The workman has not taken such objection in the course of disciplinary proceedings' therefore, in view of the legal proposition laid down in decisions supra, the contention of the learned representative for the workman that the workman was not in a position to understand the nature of the charges and has suffered prejudice is not sustainable.

17. The next contention of the learned representative on behalf of the workman was that loan were taken in the year 1988 and the show-cause notice was served on 6.07.95. The delay of about 11 years in issuing the charge-sheet has vitiated the entire proceedings.

18. Countering the above contention, learned representative for the management submits that in respect of loans taken in the year 1988, complaints were made in the year 1994 and show-cause notice was served in the

year 1995 and the workman was charge sheeted in the year 1996. Therefore, there is no inordinate delay in issuing charge sheet. Further, mere delay in issuing charge sheet would not vitiate inquiry. He also submits that the workman has not taken any plea that due to delay the workman has suffered any prejudice. In this regard he has relied on 1996 (1) LLJ 1231 SC, 1991 (2) LLJ 5 and 2001 (III) LLJ Supp. 141.

19. Upon perusal of the enquiry proceedings it reveals that the plea of delay has not been put forth by the workman. There is no plea that due to delay he has suffered any prejudice. The workman nowhere in the claim statement has stated that due to delay he was placed in a disadvantage position to defend himself. In his reply to the show-cause notice, he has not made any grievance against the delay in issuing the charge-sheet. He did not make any grievance either before the disciplinary authority or before the appellate authority in this regard.

20. In 1991 (2 LLJ 5) Hon'ble Madras High Court observed that delay by itself would not be a ground to quash the charges unless it is shown that, after the completion of the proceedings, it has turned out to be a factor which has deprived the right of defense. In 2001 (III) LLJ supp. 141 (A.P.) Hon'ble A.P. High Court has also observed that delay simpliciter itself in initiating the disciplinary proceeding against a delinquent cannot be a vitiating factor in the absence of prejudice or disadvantage suffered by the delinquent in defending his action.

21. In the light of above observations, the contention of the learned representative for the workman that the delay in issuing charge sheet has vitiated the entire proceedings is also not sustainable.

22. The learned representative on behalf of the workman also submits that findings of the inquiry officers are baseless and without any cogent evidence, therefore, the same are perverse.

Allegation I(D) and I(E) (I to V):—

23. In this regard he has pointed out that for Allegation I(D) only complainant was examined and other material witnesses Sh. Maniram Jat and Sh. Sumer Singh Nawa were not examined. In respect of allegation I (E) (i) he has pointed out that the loan was granted to loanees Sh. Keser on 16.9.93; the workman was not identified by the complainant; Loan was given through cheque and payment of cheque was made to the seller from whom buffalo was purchased; Witnesses Sh. Tarachand and Sh. Vishal Singh were not examined; The cheque was not signed by the workman; There was no proper identification of the complainant. As regard allegation I (E) (ii) it has been pointed out that the complainant Smt. Ankori appeared on 21.7.97 and on that date workman and his representative were not present and the workman was not identified; complainant was also not identified; the complainant was identified on the basis of record only; Payment was made to seller by cheque;

Regarding Allegation I(E) (iii) identification of the loanees on the basis of record was erroneous; Payment was made through cheque to seller; Buffalo was not purchased by the complainant; Material witness Sh. Ramchand Jakhad was not examined. In respect of Allegation I (E) (iv) complainant writer Sh. Mahipal was not examined; Eye witnesses Sh. Tarachand and Sh. Sumer Singh were not examined; Loanees Sh. Nathuram did not appear; Seller was not examined; Complainant was not identified. Further pointed out that for Allegation I (E) (v) complainant writer was Sh. Mahipal but he was not examined and only complainant was examined and no other witness was examined for corroborations of the evidence of the complainant.

24. The learned representative for the workman has argued that the enquiry officer has drawn his conclusions on the basis of complaints. No supportive evidence and other material witnesses were called for to prove the acceptance of money. The enquiry officer's conclusions are without any basis and without any cogent evidence. He has further argued that complainants have given their statements at the instance of Sh. Sukhdev Chaudhary Branch Manager and Sh. Mehtab Singh. He has also argued that the loan was advanced by a committee consisting of a veterinary doctor, branch manager, loan officer and B.D.O. to the seller. The above persons were responsible for disbursement of loan to the right person. There is no direct evidence of receiving the bribe by the workman from the complainants. Further, the workman was not in a position to write off the loans and therefore, the allegation that he had assured to get the loans written off is baseless. Apart that it has been admitted by the loanees that they had not purchased buffalo actually and seller had returned them. Further, the loan amount was received through cross cheque from bank. The enquiry officer has not recorded any finding as to how the money has reached to the workman while the cross cheque were issued in the name of the seller of the bank. Therefore, the findings of the enquiry officer in respect of charges which have been found proved are perverse. In support of his contentions he has relied on decision 1973 (1) SCC 813, 2011 AIR SCW 2583.

25. Per Contra, the learned representative on behalf of the management submits that complainants have been examined to prove the charges. Their statements find support from the documentary evidence. There is no law that charge cannot be proved merely on the solitary evidence. The findings of the inquiry officer are based on the material on record. The tribunal is not empowered to reappraise the evidence as an appellate authority. He further submits that the basis of insufficient evidence findings of the inquiry officer cannot be said to be perverse. The learned representative for the non-applicant has also submitted that non-utilization of loan by loanees cannot disprove the allegation of bribe against the workman. Further, whether

workman had powers to ensure exemption or write off is not pertinent, pertinent is that he assured the borrowers for the same. Moreover, loanees are not supposed to be aware of powers of different officials of bank. The learned representative has submitted that findings of the enquiry officer are based on evidence and he has drawn plausible conclusions. Therefore, the findings are not perverse and the tribunal cannot interfere with the findings of fact recorded by him. In support of his contentions he has relied on 2003 LLR 878, 1974 (3) SCC 103 (SC), 1982 (44) FLR 65 (SC), 1972 AIR SC 2182, 1999 (1) LLJ SC 604 (SC), 1972 (4) SCC 418 (SC), and 2004 (3) CDR Raj. 1781.

26. I have given my thoughtful consideration to the rival submissions of both the sides and have gone through the decisions referred to by them.

27. Upon perusal of the enquiry report it reveals that in respect of charge under Article 1(D) complaint was filed by Shri Mahipal whose statements were recorded in the enquiry. Copies of the complaint, loan account, cheque of Rs. 2000 and 1800 dated 8.2.1988 and 10.3.1988 respectively were produced. Similarly for charges under Article 1(E)(i) to 1(E)(v) statement of the respective complainants were recorded and in documentary evidence copies of the complaint, loan accounts and cheques given in respect of the sanctioned loans were produced and on the basis of analysis of the oral evidence of the complainants and relevant record pertaining to loans, the enquiry officer has given his findings.

28. Although the enquiry officer did not record evidence of other independent witnesses but in view of the principal laid down in (1974) 3 SCC 103 that there is no rule of evidence that evidence of a solitary witness cannot be relied upon and no conclusion can be based upon the evidence of such a solitary witness, the evidence of the complainants cannot be discarded merely on this ground that there is no supportive evidence. Apart that, in disciplinary proceedings the standard of proof required is that of preponderance of probability and not proved beyond reasonable doubt.

29. In para 32(3) of decision rendered in (1973) 1 SCC 813 The workman of M/S Firestone Tyre And Rubber Co. of India (Pvt.) Ltd. v/s The Management And Others referred to by the learned representative for the workman, Hon'ble Apex Court held:—

“When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the

management is guilty of victimization, unfair labour practice or mala fide.”

30. In 2011 AIR SC 2583 SBBJ v/s Nemi Chand Nalwaya Hon'ble Supreme Court has observed as under:—

“It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonable could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”

31. In 1999 (1) LLJ SC 604 Kuldeep Singh v/s Commissioner of Police Hon'ble Supreme Court has observed that in the findings recorded at domestic enquiries, a distinction has to be maintained. The distinction is between decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable, the order of punishment of dismissal would be perverse and therefore, amenable to judicial scrutiny. But if there is some evidence on record which is acceptable, however, compendious it may be, the conclusions would not be treated as perverse and the findings could not be interfered with. In (1995) 1 SCC 216 Hon'ble Apex Court has also observed that where the tribunal had not found any fault with the proceedings conducted by the enquiring authority, it had no jurisdiction to re-appreciate the evidence and set aside the order of dismissal on the ground of insufficiency of the evidence to prove the charges.

32. In present case, the enquiry conducted against the workman has already been held fair and proper and the conclusions drawn by the enquiry officer in respect of Allegations 1 (D) and 1(E) (I to V) are based on the evidence of the complainant and documentary evidence pertaining to sanctioned loans. It is not a case of no evidence or evidence thoroughly unreliable. The findings of the enquiry officer cannot be held perverse merely on the ground of insufficiency or adequacy of the evidence. The enquiry officer has deduced his conclusions from the evidence

brought on record and it is not permissible to assail that it is possible to arrive at different conclusions on the same evidence. Therefore, the findings of the enquiry officer in respect of above allegations cannot be characterized as perverse and the same cannot be interfered with.

Allegation 3:—

33. In Allegation 3 it has been alleged that "you have taken money from various borrowers by giving false assurance that their cases will be included in Agriculture Rural Debt Relief Scheme." In the said allegation there is no specific allegations regarding taking illegal gratification from the complainants Sh. Amilal and Sh. Sanwal Ram. Upon perusal of the enquiry proceedings, it reveals that despite objection in this regard taken by the workman that their names were not mentioned in the charge-sheet and there was no allegation regarding taking illegal gratification from the said complainants, their statements were recorded and on the basis of their evidence the enquiry officer has given his findings in respect of said allegation and allegation of taking illegal gratification from the loanees Sh. Amilal and Sh. Sanwal Ram has been held to be proved.

34. In (1992) 1 WLC (Raj) Hon'ble Raj. High Court has observed as under:—

"The delinquent is required to defend himself only in respect of the charge/s which is specifically levelled against him and in respect of which an enquiry is held. He cannot be punished with reference to the charge which is not levelled against him. The basis of this principle lies in the rule of *audi autrem partem* that is no man can be condemned unheard."

35. In view of the above legal proposition the finding of the enquiry officer in respect of Allegation 3 based on the complaints and evidence of the loanees Sh. Amilal and Sh. Sanwal Ram is perverse.

36. However, on the basis of findings in respect of Allegations I(D), I(E) (I to V) charges of (i) Charging illegal gratification, (ii) Committing acts unbecoming of Bank's employee (iii) Committing acts prejudicial to Bank's interest and (iv) Tarnishing Bank's image stand proved.

37. Hon'ble Raj. High Court has observed in decision rendered in WLR 1996 Raj. 40 referred to by the learned representative for the non-applicant that when there were number of charges and one of them has been found proved court should not interfere with order of punishing authority. In another decision 2004 (3) CDR 2144 (Raj.) referred to Hon'ble Rajasthan High Court has observed as under:—

"Where a person is charged on number of count and if on judicial review, charge on the same count alone is found sustained, on which punishment imposed by the Disciplinary Authority can be sustained, the Court will not ordinarily interfere with the punishment awarded by domestic Tribunal."

38. In the light of legal proposition laid down in decisions supra, the order of punishing authority in the present matter cannot be interfered merely on this ground that findings of the enquiry officer in respect of Allegation no. 3 is perverse.

39. The learned representative for the workman contents that even if the tribunal comes to the conclusion that the workman could have been punished on the facts and in the circumstances of the case, punishment of removal from service is shockingly disproportionate.

40. The learned representative for the non-applicant submits that although the tribunal has power to interfere with the quantum of punishment u/s Section 11-A of the I.D. Act but such powers can be exercised if punishment imposed is shockingly disproportionate. For charges of illegal gratification, the punishment awarded to the workman is not shockingly disproportionate. He has relied on AIR (2006) SC 615, (2011) 4 SCC 484, 2009 (15) SCC 620, 2003 (3) SCC 605, 1997 (76) FLR 176 etc.

41. In AIR 2006 SC 615 Hon'ble Apex Court has observed as under:—

"The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management u/s 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned."

42. In (2011) 4 SCC 584 Hon'ble Apex Court has observed as below:—

"When a court is considering whether the punishment of 'termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor."

43. In present case, it is not a case where the misconduct against the workman has not been proved. It is also not a case where the domestic enquiry found to have been conducted in an unfair manner or contrary to the principle of natural justice. Therefore, in view of the gravity of the charges the workman does not deserve any sympathetic consideration.

44. For the foregoing reasons, the action of the management of Bank of Baroda in terminating the services of the workman w.e.f. 17.11.2003 vide impugned order of the disciplinary authority dated 17.11.2003 is held justified and resultantly, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

45. Award as above.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3462.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 43/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-10-2012 को प्राप्त हुआ था।

[सं. एल-12011/65/2004-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3462.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947) the Central Government hereby publishes the Award (Ref. No. 43/2004) of the Central Government Industrial Tribunal/Labour Court, JAIPUR now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 12-10-2012.

[No. L-12011/65/2004-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Sh. N. K. PUROHIT, Presiding Officer

I. D. 43/2004

Reference No. L-12011/65/2004-IR(B-II) dated: 28-6-2004

The Asstt. Secretary
Syndicate Bank Staff Association
3/12, Vidhyadhar Nagar,
Jaipur.

V/s

The Asstt., General Manager,
Syndicate Bank,
Zonal Office, 6 Bhagwan Dass Road,
New Delhi.

Present:

For the applicant union : Sh. R.C. Jain

For the Non-applicant : Sh. Sanjay Verma

AWARD

24-9-2012

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

“Whether the action of the management of Syndicate Bank in awarding punishment of reduction of basic pay by one stage in the time scale of pay for a period of 3 years vide order dated 30-1-1999 and postponement of stagnation increment for 1.3.2001 to 1-3-2004 vide order dated 23-1-2002 in respect of Shri D.K. Sharma, Clerk is legal and justified? If not, what relief the workman is entitled to and from which date?”

2. The Union in its claim statement has pleaded that while the workmen was working as clerk in the M.I. Road Branch of the non applicant Bank at Jaipur, a charge sheet dated 2-5-97 was issued to him and after inquiry punishment of deduction of basic pay by one stage in the time scale of pay for a period of 3 years was awarded vide impugned order dated 30-1-1999.

3. The union has assailed the validity of the said order on the grounds that inquiry conducted against the workman was illegal; that the punishment imposed is not provided in the service rules; that first stagnation increment was released w.e.f. 1-3-1998 but the second stagnation increment was not released on the relevant date as on 1-3-2001 and the same was postponed to 1-3-2004 vide order dated 23-1-2002. Even if, punishment order dated 30-1-1999 is considered as valid, the postponement of second stagnation increment for a period of three years is illegal and unjustified. Thus, the union has prayed that orders dated 30-1-1999 and 23-1-2002 be declared unjustified and consequential benefits be given to the workman.

4. In reply, the non applicant has contended that the union was not authorized to espouse the dispute of the workman. Further, the dispute has been raised after lapse of 4-5 years therefore; the claim is not maintainable on the ground of delay. The non applicant has also contended that the inquiry was conducted in accordance with the provisions of the Bipartite Settlement and the punishment imposed is legal and justified. Vide letter dated 18-2-1999 the workman was informed that due to imposed punishment his second stagnation increment has been deferred till 1-3-2004.

5. Heard learned representative on behalf of both the parties and perused the relevant record.

6. Upon perusal of the inquiry proceedings it reveals that after service of charge sheet for alleged misconduct committed by the workman, he had admitted the charges leveled against him and in view of his admission the inquiry was concluded on 24-11-1998 and inquiry report was submitted on 21-12-1998. The inquiry officer found the charges leveled against the workman proved. The workman submitted his written submission on 7-1-1999 and after affording opportunity of personal hearing the disciplinary authority vide order dated 30-1-1999 awarded following punishment:—

“For committing acts of gross misconduct, vide clause no. 19.5(J) read with minor misconduct, vide

clause no. 19.7(d) of the Bipartite Settlement, the basic pay of Shri D.K. Sharma Emp. No. 307703 Clerk M.I. Road Branch Jaipur be and is hereby reduced by one stage in the time scale of pay for a period of three years with immediate effect."

7. The learned representative for the union contends that said punishment awarded is not even provided in the Bipartite Settlement. Therefore could not have been imposed and the punishment order is ipso facto illegal. In this regard he has relied on 2004(1) WLC 753(Raj.) and 1999 II LLJ 514.

8. In decision 2004(1) WLC 753 referred to by the learned representative for the union regulation IV (e) of The UCO Bank Officer Employees (Disciplinary and Appeal Regulations) 1976 was under consideration which provides punishment of reduction to a lower grade for post, or to a lower stage in a time scale Hon'ble court held as per the provisions of regulation IV (e) reduction to a lower grade means reduction to the lower stage from the stage the petitioner at a relevant point of time was working not on the lowest grade. In view of above Hon'ble court modified the penalty imposed by the disciplinary authority to fix the petitioner in lowest stage to lower stage.

9. In 1999 II LLJ 514 punishment of removal for major misconduct was not enumerated in the Bank of Cochin Service Rules. State Bank of India (Supervisory Staff) Service Rules were not applicable since charge was pertaining to period prior to amalgamation of Bank of Cochin. Therefore, Hon'ble Court held that discretionary power of Appellate Authority to impose punishment was restricted by Service Rules.

10. The facts of decisions supra are quite distinguishable. In present matter, punishment of reduction by one stage in the time scale of pay for a period of three years has been awarded. Thus, reduction is for one lower stage from the stage the workman at relevant point was working not in the lowest stage.

11. It has not been disputed that as per Bipartite Settlement's provisions regarding disciplinary action and procedure an employee found guilty of gross misconduct may be awarded punishment of reduction to lower stage in the scale of pay up to a maximum of 2 stages.

12. Therefore it cannot be said that punishment of reduction of the basic pay by one stage is not provided in the Bipartite Settlement. So far as period of operation of such punishment is concerned since, no specific period has been enumerated in the Bipartite Settlement, the order of reduction of pay scale by one stage for a period of three years is in consonance with the provision of Bipartite Settlement. Thus, the contention of the learned representative that the punishment awarded to the workman is not provided in the Bipartite Settlement is not tenable.

13. The next contention of the learned representative of the union is that the workman was entitled to get benefit of second stagnation increment w.e.f. 1-3-2001. In order dated 30-1-1999 it is not mentioned that second stagnation increment would be deferred for three years. He further contends that not granting the second stagnation increment during the pendency of the punishment amounts to double punishment and imposed punishment is against the provisions of Bipartite Settlement.

14. Per Contra, learned representative for the management contends that first stagnation increment was given to workman on 1-3-1998 and punishment order was in operation during period 30-1-1999 to 29-1-2002. In normal course second stagnation increment was due to the workman from 1-3-2001 which was postponed due to punishment awarded therefore, the workman was not entitled to get benefit of second stagnation increment from 1-3-2001.

15. I have given my thoughtful consideration to the rival submissions canvassed on behalf of both the parties.

16. Indisputably, the workman was awarded with the punishment of reduction in basic pay for one stage for a period of 3 years vide order dated 30-1-1999. The punishment was communicated to him vide the zonal office letter dated 18-2-1999 wherein it was mentioned that his second stagnation increment gets postponed to 1.3.2004 from 1-3-2001 in view of punishment awarded. Vide impugned letter of regional office dated 23-1-2002 following order was communicated to the manager RSPCC Jaipur :—

"The Stagnation Increment is released after 3 years of reaching the maximum scale of wages and further stagnation increments are released with physical interval of 3 years. He has been sanctioned first Stagnation Increment w.e.f. 1-3-1998 and 2nd Stagnation Increment is due to him w.e.f. 1-3-2001 in normal course, is postponed to 1-3-2004 due to punishment awarded."

17. Thereafter, vide letter dated 25-2-2002 the workman was informed that on completion of the period of 3 years his basic pay has been restored to Rs. 9360 w.e.f. 30-1-2002 (which includes on stagnation increment of Rs. 380. He was further informed that his second stagnation increment would fall due on 1-3-2004.

18. In this regard in clarification given by the Indian Bank's Association, Mumbai vide their letter dated 4-9-1996 it has been clarified that when a punishment of deduction of basic pay to lower stage in the scale of pay is awarded to an employee who has already reached on maximum in the scale, then the period spent by the employee in the lower stage is to be excluded for determining the 3 years period to be spent at the maximum of scale of pay for release of first stagnation increment. However the period, if any, already spent by the employee at the maximum of the scale, at the time of imposition of punishment has to be included in the three years.

19. Admittedly, first stagnation increment was given to the workman w.e.f. 1-3-1998. Punishment order remained in operation during period 30-1-1999 to 29-1-2002. In normal course second stagnation increment was due after 3 years w.e.f. 1-3-2001 but in present matter after reaching a maximum scale of pay the pay of the workman was reduced to a lower stage as a punitive major therefore, the period spent on lower stage was not to be counted for the purpose of determining period for eligibility for second stagnation increment. Therefore, in above factual backdrop the action of the non-applicant not considering the period from 30-1-1999 to 29-1-2002 for second stagnation increment seems to be logical and reasonable and postponement of benefit of stagnation increment for the said period cannot said to be unjustified. The contention of the learned representative for the workman that postponement of second stagnation increment amounts to double jeopardy is not tenable.

20. For the foregoing reasons, it is held that the action of the management of the bank in awarding punishment of deduction of basic pay by one stage in the time scale of pay for a period of 3 years and postponement of stagnation increment vide orders dated 30-1-1999 and 23-1-2002 respectively is legal and justified. The reference under adjudication is answered accordingly.

21. Award as above.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ० 3463.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार औरियेन्टल इंश्योरेंस कं. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए/77/2004) (आईटीसी 26/98 ओल्ड) को प्रकाशित करती है जो केन्द्रीय सरकार को 17-10-2012 को प्राप्त हुआ था।

[सं. एल-17012/46/97-आईआर(बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3463.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award [Ref. No. CGITA/77/2004 (ITC. 26/98 old)] of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oriental Insurance Co. Ltd. and their workman, which was received by the Central Government on 17-10-2012.

[No. L-17012/46/97-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present

Binay Kumar Sinha

Presiding Officer,

CGIT-cum-Labour Court,

Ahmedabad, Dated 08.10.2012

Reference: CGITA of 77/2004

Reference: ITC. 26/1998 (Old)

Oriental Insurance Company Ltd.

Manager, Oriental Ins. Co. Ltd.,

Do. 1, Navdeep Building, Nr. Income Tax Circle,

Ashram Road, Ahmedabad-380014. First Party

And

Their Workman

Shri C.K. Prajapati,

11/C, Rangsarag Flats, P.T. Road,

Narayan Nagar, Paldi, Ahmedabad. Second Party

For the first party : Shri Kishor V. Gadhia, Advocate

For the second party : Shri Manubhai C. Modi, Advocate

AWARD

The Appropriate Government/Govt. of India/Ministry of Labour and Employment/Shram Mantralay, considering as to the Industrial dispute existing between the employers in relation to the management of Oriental Insurance Company Ltd. and their workman, in exercise of power conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad by its reference order No. L-17012/46/97/IR (B-II), New Delhi dated 03-04-1998, formulating the terms of reference as per schedule:—

SCHEDULE

“Whether Shri Chimanlal Kalidas Prajapati, Ex-Inspector Gr-I of M/s. Oriental Insurance Co. Ltd. is a workman under the definition of workman prescribed under Sec. 2(s) of the Industrial Disputes Act, 1947? If so, then whether the action of the management of M/s. Oriental Insurance Co. Ltd., in terminating his services w.e.f. 10-01-1996 is legal and justified? If not, to what relief the said workman is entitled?”

(2) Consequent upon notice both parties appeared, filed Vakalatnama in favour of respective lawyers and filed their respective pleadings. 2nd party workman submitted statement of claim dated 15-07-1998 at Ext. 5 and the 1st party Oriental Insurance Co. Ltd. filed written statement dated 14-10-1998 at Ext. 7.

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(3) The case of the second party is that he was working as a Inspector grade-I since 11-10-1976 and his last monthly salary was Rs. 5,000 (Five thousand). His duties was to contact parties, factories, companies for getting a new business by way of filing a new insurance, to get the business by way of renewal, to collect the premium from the parties in cash or by cheque and to attend the office and to give daily report to senior divisional manager, to deposit and hand over the collection of cash and cheque and also has to sit in the office for minimum two hours daily. His services was under the supervision of senior divisional manager and no any worker was working under him and he had no power to give appointment of any sub-staff, and has no power to grant leave of sub-staff. His service was not as of managerial or supervisory capacity. The first party issued his suspension order vide letter dated 24-09-1984 without holding any enquiry unto allegations made against him. But no subsistence allowance was paid to him from date of suspension till date of termination on 10-01-1986. Further case is that domestic enquiry was held not according to rules and regulation, no opportunity was given and principles of natural justice was not followed. No show cause notice was give, copy of enquiry proceeding was not furnished and no opportunity was given to defend the charges. Second show cause notice was not issued nor enquiry report was furnished. His service was illegally terminated. Further case is that police case was also instituted he was chargesheeted and criminal case is pending in metropolitan magistrate court vide criminal case No. 1206/1987. On these grounds prayer made for relief of declaring his terminating from services illegal, improper and unjust and for reinstatement in service with continuity of service and full back wages with cost and any other relief to which he is found entitled.

(4) As against this the case of the 1st party as its written statement pleading inter-alia is that the reference is not maintainable, is in competent and bad in law, the second party is not a workman as defined u/s 2 (s) of the I.D. Act. The second party workman is put to strict proof of the allegation made in the paras of the statement of claim whereas the 1st party is denying all the allegation. Further contention is that the reference is time barred and is fit to be rejected on the ground of delay and latches. The case of the 1st party is that second party was not performing duties honestly, regularly, faithfully and sincerely whereas duties of the second party was to promote and canvass the business of the company, he was not doing

clerical, manual of accountancy work and so he was outside purview of workman u/s 2(s) of the I.D. Act. In reply to para 3 of s/c it has been stated that the second party had not collected subsistence allowance during period of suspension in spite of serveral times intimation to him. It is the case of the 1st party that the second party committed defaulcation, theft, forgery and impersonation in order to defraud the company and the second party has confessed-admitted the charges in writing. So there was no need to hold the enquiry against him but even then departmental enquiry was initiated, enquiry officer and presenting officer were appointed and that enquiry was conducted by following the principles of natural justice. It has been admitted that criminal case was also launched against second party and the criminal proceedings are separate proceedings whereas domestic enquiry is separate proceeding. It is also the case of the 1st party that the second party was habitual offender and earlier by order dated 26-07-1982 he was punished by stoppages of one increment with permanent effect on the proof of charge of temporary misappropriation of money amounting to Rs. 290 of the premium of a party. The second party on 04-08-1984 also confessed to have stolen on checque and signed himself and opened Bank Account on fictitious name of R.G. Patel and he himself had identified the same. He also confessed on 27.07.1984 that he has prepared certain documents with his own handwriting and that he gave forged documents to the customers. Further case is that the second party Shri Prajapati has submitted his written apology on 11-12-1984. He also confessed/admitted as many as 37 charges of forgery, issuing false receipts to the customers, collected premium from various parties and not credited in company's account opened Bank Account on fictitious name etc. All these charges are of very serious misconduct. The second party Shri Prajapati was issued chargesheet on 02-05-1985. Enquiry officer send letter to Shri Prajapati on 16-08-1985 informing as to date of enquiry sitting on 29-08-1985 but he did not send explanation and again on 26-08-1985 he sent a letter that he is unable to attend the enquiry and in support of that also sent medical certificate. The company has sent a Doctor to his house, but he was not found at his home. Then E.O. sent another letter on 13-09-1985 intimating him to attend enquiry on 30-09-1995, but second party Shri Prajapati did not present himself and so enquiry procceded against him ex-parte. Then E.O. submitted findings under the enquiry report, then pursuant to that Shri Prajapati was removed from

the service by order dated 10.01.1986. The first party has given opportunity to the second party to defend himself but he deliberately did not present himself during enquiry. On these grounds it has been asserted that the action of the company is just, legal and proper and in holding domestic enquiry principles of natural justice was followed. Alternative plea was taken that even if the court come to the conclusion that the enquiry is not legal then the management of the 1st party should be given chance to establish the charges before the tribunal. On these scores prayer made to reject the reference with cost since the second party Shri Prajapati is not entitled to get any relief.

(5) It is pertinent to mention at the very outset that the second party (Shri Chimanlal K. Prajapati delinquent) by filing a separate pursis dated 24.02.2012 at Ext. 42 has admitted the entire procedural aspect of domestic Enquiry conducted against him by the management of the 1st party. The perversity or otherwise of Enquiry report submitted by the Enquiry officer has also not been challenged. The contention of 2nd party is that criminal case instituted against him is pending for trial, however he has been removed from the services and so quantum of punishment has been questioned by the 2nd party. It has also been questioned that during period of suspension he got subsistence allowances for one month or two and for remaining period till his removal by order dated 10.01.1986, he was not paid the subsistence allowance.

(6) On the behalf of the 2nd party as per Ext. 6 (list) as many as 15 documents have been produced which are Ext. 6/1 to 6/15. Which are his appointment letter dated 16.04.1969, Confirmation letter dated 11.10.1976, certificate of merit dated 25.07.1997, suspension letter dated 24.09.1984, covering letter of service termination dated 13.01.1986, termination letter issued by the Divisional Authority of the 1st party dated 10.01.1986, request letter to release salary for the month of September, 1984, release of salary for September, 1983, request letter to pay the bonus and salary for the year 1985, letter for paying salary for the year 1984 and 1985 up to October from suspension order dated 27.09.1984 and for bonus for the year 1985 dated 30.10.1985, letter regarding with withholding of salary from October, 1984 and demand for salary slip dated 16.12.1985, request letter dated 16.12.1985 for release of medical bill for October, 1985, letter dated 16.12.1985 for withholding the subsistence allowance from October, 1984, letter dated 01.01.1986 for getting festival advance and letter dated 22.02.1986 for

getting salary certificate for the year 1984 and 1985 for income tax purpose. Besides the 2nd party deposed in oral evidence vide Ext. 10 and was cross-examined by 1st party's lawyer. The zerox of C.C. of criminal case judgment of acquittal passed in criminal case No. 1206/87 dated 07.11.2007 by the metropolitan magistrate (court No. 22) has been filed with list Ext. 18 on 25.06.2008, and through list Ext. 20 on 03.12.2008, and criminal court judgment was marked Ext. 21.

(7) On behalf of the management of the 1st party through a list (Ext. 8) as many as 19 documents have been submitted on 01.04.1999, which have been marked exhibits 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 in this case. Besides the management witness namely Shri Surendera Pal deposed in oral evidence (Ext. 22) in support of 1st party's case and was cross-examined by the lawyer of the 2nd party.

(8) In view of the pleadings of the parties and evidences on the records, the following issues have been taken up for discussions, consideration and for arriving at decision in this case.

ISSUES

(I) Whether the reference is maintainable ?

(II) Has the 2nd party valid cause of action to raise Industrial Dispute ?

(III) Whether the reference is barred by delay and latches?

(IV) Whether the second party Shri C.K. Prajapati Ex-Inspector Gr.-I of M/s. Oriental Insurance Co. Ltd. is a workman under the definition of workman prescribed u/s. 2(s) of the Industrial Dispute Act, 1947?

(V) If so, then whether the action of the management of 1st party M/s. Oriental Insurance Co. Ltd. in terminating his service w.e.f. 10.01.1986 is legal and justified ?

(VI) If not, to what relief the second party (Shri Prajapati) is entitled ?

(VII) What orders are to be passed ?

(9) ISSUE NO. IV

It has been argued by the learned counsel of the first party that it is undisputed that the second party was working as Inspector Gr.-I in the Insurance Company and he had to market policies of the company and increase and canvass business of the first party etc. and so that second party does not come under definition of workman as per section 2(s) of the I.D. Act. In support of such argument reliance has been placed upon

judgment of Delhi High Court in case of G.L. Pava V/s Chairman, New India Insurance Company Ltd. reported in 2000 LLR 464 wherein it has been held that the insurance Inspector is not a workman as defined under Section 2(s) of the ID Act. Even on perusal of the statement of claim dated 15.07.1998 Ext. 5 para 1 the second party has claimed himself to be inspector Gr.-1 and monthly salary was being drawn by him Rs. 5,000 the management witness at Ext. 22 has also stated that the second party workman is inspector Gr. 1 in the insurance company, was not a workman rather working in managerial or supervisory capacity and that his duty was to promote and canvass the policies of the company in the benefits of the company. On the other hand no any case law could have been filed on behalf of the second party to support that the post of inspector Gr.-1 in the insurance company does not fall in managerial or supervisory capacity rather comes under the definition of workman. In the case law 2000 LLR 464 it has been held by their Lordship that the post of inspector has been equivalent to the post of Development Officer of Life Insurance Corporation and so does not fall under category of workman. So in such view of the matter this issue is decided against the second party workman and it is held that the second party workman does not come under the definition of workman as per Section 2 (s) of the Industrial Dispute Act, 1947.

(10) ISSUE NO. V & VI

From perusal of Ext. 27 which was marked as Ext. 8/9 during domestic enquiry it is evident that the second party delinquent had admitted regarding as many as 37 charges of misconduct/offence of misappropriation in his detail confessional statement and in the last page of his confessional statement the delinquent has specifically stated that—"I had taken money of insurance of above mentioned 37 customers and had issued receipt for the same and did not deposit the money in the office". So it is clearly proved that the second party has committed serious misconduct of misappropriation of funds of the company as many as 37 times. It has been argued on behalf of the first party that such a delinquent person cannot be retained with company in any circumstances. Reliance has been placed upon the case law of Janatha Bazar V/s Secretary, Sahakari Noukarra Sangha Etc. reported in 2000 (III) LLR 568 SC wherein their Lordship of the Apex Court has categorically held that once the misappropriation is proved, there is no question of showing uncalled for sympathy and reinstating

the employees in service. Another case law has also been cited on behalf of the first party as to the case of the Divisional District Magistrate V/s Prabhakar Chaturvedi and Anr. Reported in 1996 (I) LLJ 811 SC where in it has been held that the punishment of dismissal from service does not call for interference having regard to proved charge of misappropriation of funds. It is evident that the second party delinquent has admitted enquiry vide pursis Ext. 42 and so the domestic enquiry conducted against the delinquent is admitted. More so the second party is also not entitled to get reinstatement as admittedly he has attended the age of superannuation long back.

(11) From perusal of the oral and documentary evidence adduced on behalf of both sides, I am of the definite opinion that order of punishment of removal from service dated 10.01.1986 does not appear to be disproportionate in any way to the gravity to the misconducts under the charges and also in view of admission/confession made by the delinquent vide Ext. 27 (8/9) during domestic enquiry. So there is no ground to interfere in the order of punishment as to removal from service which shall not be a disqualification for future employment and recovery of pecuniary loss caused to the company as per Ext. 8/9 (Ext. 33) and so there is no any ground to make interference in the punishment order by invoking the provision of Section 11 A of the ID Act. So I find and hold that the action of management of first party M/s Oriental Insurance Company Ltd. in terminating the service of second party workman Shri C.K. Prajapati, is legal and just. I further find and hold that the second party workman is not entitled to get any relief in this case by way of alteration/modification in the order of punishment imposed upon him by the Disciplinary Authority dated 10.01.1986. Issue No. V is therefore, answered in favour of the first party management and issue No. VI is decided/answered against the second party workman.

(12) ISSUE NO. III

It has been argued alternatively on behalf of the first party that the reference is required to be dismissed on the ground of delay and latches as the services of the second party was terminated on 10.01.1986 while the second party approached machinery/conciliation officer under the ID Act challenging the said punishment only on 8.11.1996 i.e. after 10 long years of alleged termination. Such argument advanced on behalf of the first party appears to be tenable. Because in the statement of claim there is no whisper about such inordinate delay and reasons thereof or explanation of the second party (C.K. Prajapati).

Even in his oral deposition Ext. 10 he has not stated a single word explaining regarding such inordinate delay caused in raising Industrial Dispute. So there is inordinate delay of more than 10 years. On behalf of the first party case law of the Nedungadi Bank Ltd. V/s K.P. Madhavankutty and others reported in 2000 (84) FLR 673 SC has been relied upon in which their Lordship have taken a view and held that the dispute rises after 7 years is not maintainable. On the other hand no any befitting argument could have been made on this issue on behalf of the second party. In such view of the matter it is further held that the reference is barred by inordinate delay and latches on part of the second party.

(13) ISSUE NO. I and II

In view of the findings given to issue No. III, IV, V, VI in the foregoing, I further find and hold that the reference is not maintainable and the second party Shri C.K. Prajapati has got no valid cause of action to raise Industrial Dispute.

(14) ISSUE NO. VII

It has been submitted on behalf of the second party that the second party was suspended by order dated 24th September, 1984 with immediate effect till he was awarded punishment of removal from services on 10.01.1986 and so the delinquent had remained under suspension for the period of about 15 months, he was not paid subsistence allowances for all those period except for couple of months. On the other hand it has been submitted on behalf of the first party that the second party deliberately did not procure subsistence allowances from the Bank in spite of reminders given to him and so the second party have not procured subsistence allowance for the majority of period of his own accord and of his own slackness. In such view of the rival contention of the parties that first party was ready to pay subsistence allowances whereas the second party was not ready to procure subsistence allowance, no any adverse order can be passed questioning the validity of the domestic enquiry and questioning the imposition of punishment to the delinquent. However it can only be observed that if payment of any due is to be made by the first party towards subsistence allowances the same can be paid to the second party/family members/legal representatives. But so far as the merits of this reference case is concerned I passed the following orders in view of the issues decided above.

4292 GI/12-12

ORDER

The reference is dismissed on contest. No order as to any cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का. आ. 3464.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ संख्या सीजीआईटीए/131/2004 (आईटीसी57/98 ओल्ड एवं आईटीसी 95/08] को प्रकाशित करती है जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल-17012/44/97-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3464.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award [Ref. No. CGITA/131/2004 (ITC.57/98 old and ITC. 95/08)] of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC OF INDIA and their workman, which was received by the Central Government on 25/10/2012.

[No. L-17012/44/97-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Binay Kumar Sinha,

Presiding Officer,

CGIT cum Labour Court,

Ahmedabad, Dated 12th October, 2012

Reference: CGITA of 131/2004

Reference: ITC 57/1998 (Old)

Reference: ITC 95 of 2008

The Sr. Divisional Manager,
LIC of India, Divisional Office,
Relief Road, Ahmedabad-380001.

..... First Party

And

Their workman

Shri Bhartbhai N. Ghughal

Jetha Pitamber's Chawl,

Opp. Greek Cross Society,

Behrampura, Ahmedabad-380022.Second Party

For the first party : Shri Kishor V. Gadhia, Advocate

For the second Party : Shri Jaintilal I. Shah, Advocate

AWARD

The Appropriate Government/Govt. of India/Ministry of Labour/Shram Mantralaya by its reference order No. L-17012/44/97/IR (B-II) New Delhi dated 21.04.1998 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act 1947, referred the dispute for adjudication to Industrial Tribunal, Ahmedabad formulating the terms of reference as follows under the schedule:—

SCHEDULE

"Whether Sh. Bharatbhai Nanjibhai Ghughal engaged by the LIC Divisional Office, Ahmedabd is a workman? If yes, then whether his termination of service in the guise of retrenchment is legal and justified? If not, to what relief the said workman is entitled?"

(2) Parties to the reference consequent upon notice appeared and filed respective pleadings-2nd party his statement of claim dated 03.08.1998 as Ext. 4 and 1st party (L.I.C.) its written statement dated 09.11.1998 at Ext. 5.

(3) The case of 2nd party is that he joined the first party corporation in August 1994 as messenger and that he had to deliver post documents, files, proposal etc. from H.O. to different branch offices and that he was paid Rs. 50 as wages per day on voucher. His duty hours were from 10.45 am. to 5.30 p.m. and that the post and the work on which he was working was of permanent nature. He was not issued any pay slip. He was paid fortnightly on voucher. His services had been terminated on and from 20.02.1996 orally without paying notice pay or wages in lieu of notice period his due wages and retrenchment compensation. His termination of services is malafide and arbitrary in order to deprive him of benefits of permanent employee. His termination is in violation of Section 25 F, 25 (G) and 25 (H) of the I.D. Act. He had served a pleader's notice to the LIC dated 23.02.1996 demanding reinstatement to original post with continuity of service and back wage and reply was given by the 1st party corporation dated

11.03.1996 through its Advocate that second party was doing self-employed service like currier. Thereafter complaint was made before ALC (Central). Subsequently ALC (C) sent failure report resulting in reference order by the appropriate Govt. On these scores prayer has been made for reinstatement to his original post with continuity of service and back wages and for other relief to which the second party found entitled.

- (4) The first party corporation in its W.S. has contended that the second party was never employed by it and that there was no master and servant relation between 1st party corporation and second party and that he was never on muster roll of the 1st party corporation and that he was working in O and S department since 1994 as messenger and that he had no any fixed duty hours. He was not issued any pay scale. It has been admitted that the second party was paid on voucher. Further contention is that the question of giving any notice pay in lieu of notice or retrenchment compensation does not arise since the second party was not in its employment. It has been denied that the services of the second party have been terminated or that termination was arbitrary or malafide. It has been denied that the action of the 1st party corporation in terminating the services of second party is unjust arbitrary or malafide, void or in violation of Sec. 25 F, 25 G or 25 H. of ID Act. Further contention is that second party was delivering posts, papers etc. from regional office to branch offices not as a employee but as a curier as self-employed. The case of the 1st party corporation is also that they have statutory rules and regulations for recruitment. On these scores prayer has been made to reject the reference.
- (5) The second party submitted list of documents on 24.04.1999 vide Ext. 8 and the documents have been marked Exts. 10, 11, 12, 13, 14 and 15. The S.P. filed an application at Ext. 16 for production of document by the 1st party corporation and the court ordered for comply or reply below Ext. 16 on 06.07.2000. The 1st party corporation submitted three documents with list at Ext. 17 on 07.09.2000 and its production was allowed by the court. The second party adduced his evidence at Ext. 20 and was cross-examined by the lawyer of 1st Party

Corporation. The second party closed his evidence by a closing pursis Ext. 22. First party corporation examined its witness namely Binnubhai Gopalbhai Kapadia in Ref. ITC 95/2004 and produced by the 1st party as evidence in this reference case at Ext. 24, then first party corporation files closing pursis at Ext. 26.

(6) In view of the pleadings and the oral and documentary evidence of the parties, the following issue have been taken up for discussion, consideration and arriving at decision in this case.

ISSUES

- (I) Whether the reference is maintainable?
- (II) Has the second party valid cause of action to raise the dispute?
- (III) Whether the second party Shri Bharatbhai Nanjubhai Ghughal engaged by the LIC Divisional Office, Ahmedabad is a workman?
- (IV) Whether his termination of service is legal and justified without following the provision of Sections 25 F, 25 G or 25 H of the ID Act?
- (V) Whether the second party is entitled to the relief of reinstatement and back wages?
- (VI) What orders are to be passed?

FINDINGS

(7) Issue Nos. III & IV

The second party deposed at Ext. 20 that he joined as messenger in August 1994 and his duty hours were 10.45 a.m. 5.30 p.m. he had to deliver the posts from H.O. to branch office Vastrapur Vasna, Paldi and Isanpur. He also deposed Chandrakant Solanki and Narshibhai Solanki were also working as messenger. He had to go to deliver post from H.O. to branch office on bicycle and he had carry post from branch office to H.O. by taken signature on delivery book of branch offices and also at H.O. He was paid Rs. 50 per day. He was working on permanent nature of post. He was terminated on 20.02.1996 without notice or notice pay in lieu of notice. During cross-examination 1st party has challenged the second party duty hours by saying that there was no duty hours for him and that he had to deliver post as curier according to his convenience and that for service he was paid through vouchers. On the other hand the evidence of 1st party corporation witness at Ext. 24 is that

the second party and Chandrakant Solanki were engaged on temporary work without following the rules and procedure of recruitment. There is no practice in 1st party corporation to employ employees on temporary, daily wages or casual worker, whenever requirement arises such type of persons can be appointed. The power to appoint on permanent post in corporation vest in Divisional Head and the power to appoint on casual temporary and daily wage vest in the Department Head. He stated that the second party was doing the work of delivering the post and was paid lump-sum remuneration for the days on voucher taking his signature. The duty of messenger are to deliver post from H.O. The 1st party witness admitted contents of Exts. 10 and 12 filed by the 2nd party. He also admitted Ext. 8/ 8 voucher on which remuneration was paid to the second party.

- (8) From Ext. 10 it does not appear that the second party had been engaged as messenger on permanent post. It is a correspondence from Naroda branch to the Manager O.S. Department D.O. Ahmedabad as to requirement of daily services of messenger to deliver post since the messenger coming either thrice or even one in week, resulting in accumulation of various posts, statements, etc. Ext. 12 is noting of O.S. department regards need of three messenger service whereas presently two are working for delivery of post to and from H.O. to B.O and B.O. to H.O. This does not also go to show that engagement of messengers was on permanent post. As it has been stated by witness of 1st party that there is no post of messenger in the 1st party corporation. The vouchers at Ext. 4/8 in the name of second party Bharatbhai Ghughal dated 16.12.1996 regarding payment of remuneration of Rs. 700 @ of Rs. 50 per day. This does not go to connect that the second party was engaged as temporary employee of the 1st party corporation.
- (9) Only admitted position is that the second party and two others were engaged as messengers but the 1st party corporation on remuneration of Rs. 50 per day to deliver post from H.O. to branch offices lying in the different zone of Ahmedabad City and also to collect posts etc. from branch offices for delivery at H.O. so the nature of work of the second party does not attract to be engaged a daily rated worker/casual worker to join duty at

H.O. during duty hours appears more to be the service of curier to deliver post either daily or thrice in a week. The second party in his evidence vide Ext. 20 admitted that he was not paid wages on wage register rather was paid wages on voucher. He also admitted during cross-examination that for his appointment there was no advertisement in newspaper. He was not given any appointment order. He was being paid on actual working days. Regarding gainful employment he has stated that in his family there are two members and he had to spend monthly Rs. 1500-2000 to which he himself provide for survival of family so it appears that after alleged termination. Second party is earning adequate amount and is not unemployed.

(10) From making scrutiny of the evidence oral and documentary, I find that the second party could not have been able to establish that he was a workman of the 1st party corporation as defined u/s 2(s) of the I.D. Act. Instead it goes to show that the second party was self-employed and getting remuneration by vouchers on the service of being a curier to deliver posts from H.O. to B.O. and from B.O. to H.O.

(11) Even if it is presumed for the sake of argument that second party is workman, even then he is not entitled to get any relief as prayed for because, the second party has failed to establish the alleged breach of section 25 F, 25 G and 25 H of the I.D. Act. The provision of section 25 F only come in picture when second party establishes that he completed 240 days of work in 12 month preceding his alleged termination. As per catena of decision of the Hon'ble Apex Court the burden lies upon the second party to prove that he has completed 240 days in 12 months preceding his date of termination. More so the second party Bharatbhai N. Ghughal either in his statement of claim (Ext. 4) or in his oral evidence (Ext. 20) has not stated a single word that he has completed 240 days of work in calendar year. In such view of the matter non-production of vouchers by 1st party corporation as per explanation that vouchers are very old and could not have been traced out does not call for drawing adverse inference against the 1st party as argued on behalf of second party to draw adverse inference, owing to the reason that the s.p. not specifically pleaded that he completed 240 days of work in calendar year preceding to date of termination and also not a single word uttered in his deposition. (Ext. 20).

(12) The case laws relied upon by the learned counsel of the second party (1) in Gopal Krishnaji Ketar Vs. Md. Haji Latif (AIR 1968 SC 1413), (2) Ratansingh V/s Union of India [1997 (11) SCC-396], (3) Municipal Corporation of Delhi V/s Pravinkumar Jain [1998 (11) LLJ. 674], (4) All India Radio V/s. Santosh Kumar [1998 (78) FLR 814], (5) Rajniben P. V/s. Executive Engineer, Unja Irrigation Division [1998 (2) GLH.], (6) have got no application in the instant case on violation of provision of sec. 25 F I.D. Act. Further the case law relied upon by the second party in case of Baleshward Dat and Other V/s. State of U.P. (AIR 1981) P 41 is also not applicable since the 2nd party has failed to establish that he is workmen defined u/s. 2(s) of the I.D. Act. Likewise the case law of Patwardhan case (AIR 1977 S.C. 2051) and Chauhan's case (AIR 1977 SC 251) are also not applicable in the instant case. The case law of D.K. Yadav's V/s. J.M.A Industries Limited (1993 LLN-2-275) is also not applicable in the instant case.

(13) On the other hand Shri K. V. Gadhia Learned Counsel for the 1st party corporation has relied upon the case law of Halvad Nagarpalika and Others V/s. Jani Dipakbhai Chandrevadanbhai and Others (2003 II GHJ 397) (Guj. H.C.) that class IV employee recruitment according to rule is a must and that provision of section 25 F cannot be invoked in the case of daily waged employee whose appointments are without following the due procedure laid down in the statutory or recruitment policies. He has also relief upon case law of State of U.P. and Others V/s. Rekha Rani (2011 II CLR 17) on the point that on temporary employees not selected and appointed on a sanctioned post when terminated from services cannot have any right to the post and cannot be granted the relief of reinstatement and consequential benefits. The 1st party has also relied upon a case law of G.M. Tanda Thermal Power Project V/s. Jai Prakash Shrivastav & Another (2008 LLR 30 S.C.) on the point reinstatement of workmen by a labour court is liable to be quashed when they were engaged for a short period that too not by the competent authority but by an officer is order to meet certain contingencies.

(14) The case laws relied upon by the 1st party appears to be tenable to support the 1st party corporation case.

(15) Thus as per discussions and consideration made above to the oral and documentary evidence and also on perusal of case laws cited by the parties, I find and hold that the second party Shri Bharatbhai N. Ghughal engaged by the LIC Divisional Officer, Ahmedabad is not a workman as defined u/s 2(s) of the I.D. Act, 1947. I further find and hold that his termination of service by

oral order of 1st party for discontinuing from the work of a curier to deliver posts from H.O. to B.O. and B.O. to H.O. is legal and justified and there was no need to comply with the provisions of 25-F or 25-G or 25-H of the I.D. Act.

(16) ISSUE NOS. I & II

In view of the findings to issue No. III & IV in the foregoing, I further find and hold that the reference is not maintainable and the second party has no valid cause of action to raise dispute.

(17) ISSUE NOS. V & VI

In view of the findings to issue Nos. I, II, III & IV in the foregoing, I further find and hold that the second party Shri Bharathbhai N. Ghughal is not entitled for the relief of reinstatement and back wages or any other consequential benefits. So the following order is passed in this case.

ORDER

This reference is dismissed on contest. No order as to cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer.

नई दिल्ली, 26 अक्टूबर, 2012

का. आ. 3465.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/157/2001 को प्रकाशित करती है जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल.-12011/135/2001-आई आर(बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O.3465.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/157/2001) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 25-10-2012.

[No. L-12011/135/2001-IR(B-II)]
SHEESH RAM, Section Officer

4292 GI/12-13

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/157/2001

Presiding Officer : SHRI MOHD. SHAKIR HASAN

The General Secretary,
Dainik Vetal Bhogi Bank Karamchari Sangathan,
Hardev Niwas, 9, Saver Road,
Ujjain Workman/Union

Versus

The General Manager,
Bank of India, Head Office,
Express Towers, Nariman Point,
Mumbai Management

AWARD

Passed on this 4th day of October, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12011/135/2001-IR(B-II) dated 10-10-2001 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of Bank of India, Main Office, Express Tower, Nariman Point, Mumbai in not giving the permanent appointment and terminating the services of Shri Parkash Goswami w.e.f. 12-3-1998 is legal and justified? If not, what relief the concerned workman is entitled to?”

2. The case of the Union/workman in short is that the workman Shri Parkash Goswami was working at Khargaon Branch of the management Bank since 4-7-1986. He was transferred from the said branch on 1-5-1991 to Khandwa branch of the Bank. When he demanded bonus and permanent appointment in the bank, he was terminated on 12-3-1998 without notice or without pay in lieu of notice. He was also paid bonus of the year 1996-97 and 1997-98. It is stated that the workman had worked more than 240 days in a year. It is submitted that the workman is entitled to be appointed in permanent service and the action of the management to terminate him be declared as illegal and unjustified.

3. The management appeared and filed Written Statement. The case of the management, inter alia, is that the alleged workman Shri Parkash Goswami

was never on the roll of the Bank. It is stated that the head of the Bank's Branch/office is required to engage any person whenever regular sub-staff are absent or are on leave. The alleged workman was engaged for few days on daily wages temporarily as and when required on exigency in absence of regular employee. He was paid wages as per minimum wages. It is denied that the alleged workman was continuously engaged from 4-7-1986 to 12-3-1998. It is submitted that he is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are settled for adjudication:—

- I. Whether the action of the management in terminating the services of Shri Parkash Goswami is legal and justified?
- II. Whether Shri Goswami is entitled to be given permanent appointment?
- III. To what relief the workman is entitled?

5. Issue No. I

Admittedly the alleged workman was engaged by the management on daily wages as casual employee. He was not appointed permanently under recruitment rules. It is also admitted that he was paid bonus under rules for the services rendered by him. It is also an admitted fact that he was disengaged without giving any notice nor one month wages was paid in lieu of notice nor retrenchment compensation was paid as provided under Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is also an admitted fact that the Branch Manager was empowered to engage causal worker in case of exigency when the regular employee was absent or on leave.

6. Now the important question is as to whether the alleged workman was in continuous service for a period of one year during a period of twelve calendar months preceding the date of alleged termination to attract the provision of Section 25(B)(2) of the Act, 1947. If so, then whether the provision of Section 25-F of the Act, 1947 is violated before disengaging him from services. The workman has adduced oral and documentary evidence in the case. The workman Shri Parkash Goswami is examined himself in the case. He has supported his case. He has stated that he was Peon-cum-Driver. He worked continuously from 4-7-86 to 12-3-98. He has further stated that he

cannot say that each year he had worked how many days from 1986. He has also stated that he had filed photocopies of the documents obtained from the Bank Officers. Those documents are admitted by the management which are marked as Exhibit W/1 to W/12. His evidence shows that he had worked from 1986 to 12-3-98 but he is not able to say that as to how many days he worked each year to attract the provision of the Act, 1947.

7. Now let us examine the documents filed by the worker and are admitted by the management. Exhibit W/1 is the reply dated 25-9-2000 of the management filed before the Labour Enforcement Officer (Central), Indore (in short LEO(C) Indore). This is filed to show that the management had admitted the payment of wages and bonus to the workman till the financial 1997-98 *vide* letters dated 17-11-1998 and 23-1-1999 respectively. This further shows that he had worked to the extent of days in a year which was sufficient to pay bonus under Bonus Rules. The management has concealed this fact that as to how many days the workman had worked each year. It is apparent that the management has sufficient records of the days of work of the workman. This aspect also corroborates the case of the workman. Exhibit W/2 is another letter dated 28-5-1998 whereby the management had filed reply parawise to the LEO(C) Indore. This reply further shows that the bonus of the year 1992-93 and 93-94 was paid to the workman. This shows that the workman had worked in the management Bank had documents in his possession to calculate bonus but the same is not filed in Court. The adverse inference is to be drawn and the contention of the workman that he worked more than 240 days in a calendar year specially 240 days and more in twelve calendar months preceding the date of termination to attract the provision of Section 25(B)(2) of the Act, 1947 is to be believed.
8. Exhibit W/3 is the copy of the reference order. Exhibit W/4 to W/11 are settlements of other persons which were arrived between the management and those employees. There is no relevancy of those documents in the case.
9. Exhibit W/12 is the letter dated 23-1-99 to the LEO(C) Indore whereby the management informed the payment of bonus of the financial year 1996-97 and 1997-98 to the workman Shri Parkash Goswami. The letter also has enclosed the list of the days of works done by the workman. The said list clearly shows that from 13-3-97 to 12-3-1998 *i.e.* in twelve

months preceding the date of termination the workman had worked for 252 days. This shows that the provision of Section 25(B)(2) of the Act, 1947 is attracted. This shows that his service shall be considered to a continuous service for a period of one year in twelve calendar months prior to the date of reference or termination. Since his service is counted as a continuous service for one year, the provision of Section 25-F of the Act, 1947 is applicable. Admittedly no notice nor one month wages in lieu of notice nor any retrenchment compensation was paid under the provision of Section 25-F of the Act, 1947. This shows that the termination of the workman was in violation of the provision of Section 25-F of the Act, 1947. Thus the evidence of the workman establishes that the termination is illegal and unjustified.

- On the other hand, the management has examined only one witness in the case. The management witness Shri Kuldeep Ku. Shalwar was working as Branch Manager, Khargone Branch of the Bank. He has stated that he was posted in the alleged Branch of the Bank from 4-6-90 to 13-6-92 and during those period the workman had worked as casual daily wages employee but he is unable to say about the total period of work. His evidence does not show as to why the relevant documents have not been filed in the case. Thus the oral and documentary evidence of both the parties establish that there is violation of the provision of Section 25-F of the Act, 1947. This issue is decided in favour of the workman and against the management.

11. Issue No. II

Admittedly the workman was engaged on casual basis. He was not engaged by adopting the procedure of recruitment rules as is required for appointment in the permanent cadre of the Bank service. This itself shows that he is not entitled to be given permanent appointment in the Bank. This issue is decided against the workman and in favour of the management.

12. Issue No. III

The learned counsel for the management submitted that even if it is found that there was violation of the provision of Section 25-F of the Act, 1947 the reinstatement with full back wages should not automatically pass. The learned counsel has relied the decision reported in 2011(1) MPLJII, Incharge Officer and another Vrs. Shunker Shetty wherein the Hon'ble Apex Court has held that—

"We think that if the principles stated in Jagbir Singh, (2009) 15 SCC 327 and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 percent per annum."

It is urged that in this particular case, the workman was intermittently engaged as and when required. Considering the submission made above and the evidence available on the record and in view of the decision of the Hon'ble Apex Court it appears to be justified to give monetary compensation instead of reinstatement with back wages. Thus the management is directed to pay 1,00,000/- (Rupees One Lac) within two months from the date of award in lieu of reinstatement which shall be appropriate, just and equitable. The reference is accordingly answered.

- In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का. आ. 3466.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 17/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल.-12012/79/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3466.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 17/2007) of the

Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 25-10-2012.

[No. L-12012/79/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, LUCKNOW**

PRESENT

Dr. MANJU NIGAM, PRESIDING OFFICER

I.D. No. 17/2007

Ref. No. L-12012/79/2006-IR (B-II) dated: 01.05.2007

BETWEEN

Shri Neeraj Kumar S/o Shri Ashok Kumar
R/o Yogendra Pathak Road
37, Kakbulganj
Near Budh Mandi
Lucknow

AND

The Assistant General Manager
Punjab National Bank
Ashok Marg, Hazratganj
Lucknow

AWARD

1. By order No. L-12012/79/2006-IR (B-II) dated: 01.05.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Neeraj Kumar S/o Shri Ashok Kumar, R/o Yogendra Pathak Road, 37, Kakbulganj, Near Budh Mandi, Lucknow and the Assistant General Manager, Punjab National Bank, Ashok Marg, Hazratganj, Lucknow for adjudication.
2. The reference under adjudication is:

“Whether the action of the management of Punjab National Bank, Lucknow in terminating the service of Neeraj Kumar S/o Shri Ashok Kumar w.e.f. 23-12-2004 is legal and justified ? If not to what relief the concerned workman is entitled?”

3. The case of the workman, Neeraj Kumar, in brief, is that he has been engaged as sweeper w.e.f. 27-03-2000 in the Bank, in the leave vacancy aroused due to absence of one Shri Asharfi Lal, a part time employee; and had been paid accordingly from 01-11-2001 to 22-12-2004 through salary bill on half scale rates. He has further submitted that he had been paid bonus for the financial years 2002-2003 and 2003-2004. The workman has alleged that he worked continuously for 1386 days during his period of engagement even then the management terminated his services his services by orally w.e.f. 22-12-2004, without any reason, notice, notice pay or retrenchment compensation in violation to the provisions contained in the Section 25 F of the I.D. Act, 1947. Accordingly, the workman has prayed that his termination be set aside and he be reinstated with all consequential benefits.

4. The management of the Bank has denied the allegations of the workman, filling its written statement; wherein it has submitted that the workman was never appointed in the Bank services following due procedure, at any point of time, therefore, there arise no question to his termination or compliance of provisions of Section 25 F of the I.D. Act. It has further submitted that the workman was engaged on casual basis in leave gap arrangement only and was paid accordingly he was disengaged when there was no need of his services. Thus, the management of the bank has prayed that the claim of the workman be rejected without any relief to him.
5. The workman has filed rejoinder whereby he has only reiterated his averments already made in the statement of claim and has introduced nothing new.
6. The parties have filed photocopy of certain documents in support of their respective claim. On completion of pleadings, the workman was called upon to file evidence in support of its claim. At this juncture the parties requested to settle their dispute through Lok Adalat, resultantly; the case was taken up in the Lok Adalat for amicable settlement of their dispute. After several hearings the parties arrived at a settlement and filed the terms of their settlement before this Tribunal vide application dated 12-10-2012, paper No. WM-31, which is made part of this Award as Annexure-1.
7. Apart from other terms of the settlement the management has accepted to appoint the workman, in accordance with the circular dated 02-04-2011 of the Bank, on 1/3rd scale as part time

sweeper, within six months of this award and the workman is agree to forego the back wages. It is specifically mentioned in the terms of settlement that in case of non-compliance of the terms of the settlement the workman shall be at liberty to raise dispute again. Thus, the parties have requested this tribunal to pass the award accordingly.

8. Therefore, without prejudice to the stand taken by the respective parties and in view of the settlement, filed by the parties, before this Tribunal, signed by the workman, Neeraj Kumar Bhartiya and on behalf of the management by the Senior Manager, Punjab National Bank, Divisional Office, Lucknow, there is no need to decide the reference order on merit and the same is disposed of as there is no grievance left with the workman. The workman's case for relief claimed stands withdrawn. No relief is required to be given to the workman concerned. The matter is resolved accordingly in the terms of settlement, Annexure-1; and the reference is also answered accordingly.

9. Award as above.

Lucknow

12.10.2011

Dr. MANJU NIGAM, Presiding Officer

समक्ष श्रीमान पीठासीन अधिकारी,
केन्द्रीय सरकारी औद्योगिक न्यायाधिकरण
केन्द्रीय भवन, अलीगंज, लखनऊ

Annexure-1

वाद सं—17/2007

नीरज कुमार भारती

पुत्र श्री अशोक कुमार भारती

..... वादी

बनाम

पंजाब नेशनल बैंक,

मण्डल कार्यालय लखनऊ

..... प्रतिवादी

उभय पक्षकारों द्वारा संयुक्त हस्ताक्षरित प्रार्थनापत्र

महोदया,

पक्षकारों का निवेदन निम्नवत् है—

- यह कि उपरोक्त वाद आज दिनांक 12-10-2012 को न्यायालय श्रीमान जी के समक्ष समझौता निष्पादित करने हेतु नियत है।
- यह कि उपरोक्त वाद में उभय पक्षकार जिस शर्त पर परस्पर सहमति के आधार पर समझौता निष्पादित करने हेतु तैयार है। वह शर्त निम्न है—

(क) यह कि मैं पंजाब नेशनल बैंक के सर्कुलर दिनांक 02-04-2011 के अनुसार अंशकालीन सफाई

कर्मचारी (पार्ट टाइम स्वीपर) की शैक्षिक योग्यता के तहत 1/3 वेतनमान (स्केल) पर लखनऊ सर्किल की किसी भी शाखा में नियोजित करने के बादी के प्रस्ताव से यदि प्रतिवादी सहमत है तो बादी माननीय न्यायालय के समक्ष प्रस्तुत अपने प्रार्थनापत्र दिनांक 28-06-2011 के दूसरे प्रस्तर के कहे गये कथन के अनुसार अवधि में नियोजन की तिथि से पूर्व की अवधि के बकाया वेतन एवं उक्त अवधि के विनियमितकरण के हितलाभों के संबंध में कोई मांग अथवा किसी तरह का कोई बाद प्रस्तुत नहीं करेगा।

(ख) यह कि उपरोक्त प्रस्ताव के अनुपालन सुनिश्चित करने हेतु 6 (छह) माह का समय (माननीय न्यायालय के अभिनिर्णय की तिथि के पश्चात) पक्षकारों के मध्य तय किया गया है इस अवधि में बादी को प्रतिवादी द्वारा अंशकालीन सफाई कर्मचारी (पार्ट टाइम स्वीपर) के 1/3 वेतनमान (स्केल) के पद पर, लखनऊ मण्डल (सर्किल) की किसी भी शाखा में नियोजित करने के आदेश के 3 दिवस के अन्दर बादी द्वारा कार्यभार ग्रहण कर लिया जायेगा।

(ग) यह कि उभय पक्षकारों द्वारा इस संयुक्त हस्ताक्षरित प्रार्थनापत्र में वर्णित तथ्यों को भलीभांति पढ़ एवं समझ लिया गया है जिसमें उन्हें कोई आपत्ति नहीं है।

(घ) यह कि इस प्रार्थनापत्र पर संयुक्त रूप से हस्ताक्षर करने के पश्चात् इसकी शर्तों की स्वीकारोक्ति एवं उनका अक्षरण: अनुपालन पक्षकारों पर बाध्यकारी होगा।

(च) यह कि समझौते की शर्त का अनुपालन ना होने अथवा कोई अन्य प्रक्रियात्मक अवरोध के कारण यदि प्रतिवादी द्वारा बादी का नियोजन नहीं किया जाता है तो वह पुनः बाद प्रस्तुत करने हेतु स्वतंत्र होगा एवं यदि बादी द्वारा नियोजन प्राप्त होने के उपरान्त प्रतिवादी के विरुद्ध पिछली अवधि से संबंधित कोई हितलाभ विषयक बाद प्रस्तुत किया जाता है तो उक्त मांग विधिमान्य नहीं होगी ऐसी स्थिति में प्रतिवादी को उसे पुनःकार्य से हटाने का पूर्ण अधिकार होगा।

3. यह कि पक्षकारों द्वारा उपरोक्त प्रस्ताव की स्वैच्छिक स्वीकृति एवं सहमति के आधार पर माननीय न्यायालय से अभिनिर्णय दिये जाने हेतु प्रार्थनापत्र प्रस्तुत किया जा रहा है। जिसे स्वीकार किया जाना न्याय हित में आवश्यक है।

निवेदन

अतएव माननीय न्यायालय से निवेदन है कि पक्षकारों द्वारा संयुक्त हस्ताक्षरित इस प्रार्थनापत्र में वर्णित तथ्यों को संज्ञान में लेकर अभिनिर्णय

4292 GI/12-14

पारित किया जाना न्याय हित में आवश्यक एवं पक्षकारों द्वारा प्रार्थनीय है, अति कृपा होगी।

लखनऊ
दिनांक 12-10-2012
नई दिल्ली, 26 अक्टूबर, 2012
(नीरज कुमार भारती) वादी
(वरि० प्रबंधक) प्रतिवादी
पंजाब नेशनल बैंक,
मण्डल कार्यालय लखनऊ

का. आ.3467.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए/95/2004 (आईटीसी 60/98 पुराना एवं आईटीसी-68/98) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल-17012/45/97-आईआर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3467.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award [Ref. No: CGITA/95/2004 (ITC.60/98 old & ITC. 68/98)] of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of LIC of India and their workman, which was received by the Central Government on 25.10.2012.

[No. L-17012/45/97-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present:

Binay Kumar Sinha, Presiding Officer,
CGIT-cum-Labour Court,
Ahmedabad, Dated 12th October, 2012

Reference: CGITA of 95/2004

Reference: ITC. 60/1998 (Old)

Reference: ITC. 68 of 1998

The Sr. Divisional Manager,
LIC of India, Divisional Office,
Relief Road, Ahmedabad-380001

...First Party

And

Their workman

Shri Chandrakant A. Solanki
5, New Ghanshyamnagar Society,
Nr. Radhaswami Mandir, Ranip,

Ahmedabad-382480Second Party

For the first party : Shri Kishor V. Gadhia, Advocate

For the second party : Shri Jaintilal I. Shah, Advocate

AWARD

The Appropriate Government/Govt. of India/Ministry of Labour/Shram Mantralay by its reference order No. L-17012/45/97/IR (B-II) New Delhi dated 21-04-1998 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act 1947, referred the dispute for adjudication to Industrial Tribunal, Ahmedabad formulating the terms of reference as follows under the schedule : ..

SCHEDULE

"Whether Sh. Chandrakant A. Solanki engaged by the LIC Divisional Office, Ahmedabad is a workman? If yes, then whether his termination of service in the guise of retrenchment is legal and justified? If not, to what relief the said workman is entitled?"

- (2) Parties to the reference consequent upon notice appeared and filed respective pleadings-2nd party his statement of claim dated 03.08.1998 as Ext. 3 and 1st party (L.I.C.) its written statement dated 03.11.1998 at Ext. 6.
- (3) The case of 2nd party is that he joined the first party corporation in February 1990 as messenger and that he had to deliver post documents, files, proposal etc from H.O. to different branch offices and that he was paid Rs. 50 as wages per day on voucher. His duty hours were from 10.45 am. to 5.30 p.m. and that the post and the work on which he was working was of permanent nature. He was not issued any pay slip. He was paid fortnightly on voucher. His services had been terminated on and from 20.02.1996 orally without paying notice pay or wages in lieu of notice period. His due wages and retrenchment compensation. His termination of services is malafide and arbitrary in order to deprive him of benefits of permanent employee. His termination is in violation of Section 25 F, 25 (G) and 25 (H) of the I.D. Act. He

had served a pleader's notice to the LIC dated 23-02-1996 demanding reinstatement to original post with continuity of service and back wage and reply was given by the 1st party corporation dated 11-03-1996 through its Advocate that second party was doing self-employed service like currier. Thereafter complaint was made before ALC (central). Subsequently ALC (C) sent failure report resulting in reference order by the appropriate Govt. on these scores prayer has been made for reinstatement to his original post with continuity of service and back wages and for other relief to which the second party found entitled.

- (4) The first party corporation in its w.s. has contended that the second party was never employed by it and that there was no master and servant relation between 1st party corporation and second party and that he was never on muster roll of the 1st party corporation and that he was working in O and S department since 1994 as messenger and that he had no any fixed duty hours. He was not issued any pay scale. It has been admitted that the second party was paid on voucher. Further contention is that the question of giving any notice pay in lieu of notice or retrenchment compensation does not arise since the second party was not in its employment. It has been denied that the services of the second party have been terminated or that termination was arbitrary or malafide. It has been denied that the action of the 1st party corporation in terminating the services of second party is unjust arbitrary or malafide, void or in violation of sec. 25 F, 25 G or 25 H. of ID Act. Further contention is that second party was delivering posts, papers etc. from regional office to branch offices not as a employee but as a curier as self-employed. The case of the 1st party corporation is also that they have statutory rules and regulations for recruitment. On these scores prayer has been made to reject the reference.
- (5) The second party submitted list of documents on 24-04-1999 vide Ext. 7 and submitted 6 documents. The S.P. further submitted list of document (Ext. 8) on 28-04-1999 and submitted three documents which are Ext. 10, 11 and 12 which are zerox copies of two vouchers and zerox copy of I-card. The S.P. filed an application at Ext. 13 for production of document by the 1st party corporation and the court ordered for comply or reply below Ext. 13 on 07-09-2000. The 1st party corporation submitted 4 documents with list at Ext. 14. The second party adduced his evidence at Ext. 17 and was cross-examined by the lawyer of 1st Party Corporation. The second party closed

his evidence by a closing pursis Ext. 19. First party corporation by filing an application at Ext. 21 that Reference ITC 95/2008 and 68/2008 are identical so 1st party witness Mr. Vinubhai Gopalbhai Kapadia in Ref. ITC 95/2008 vide Ext. 24 and since both the matters are identical the C.C. of deposition of Mr. Kapadia may be permitted to be filed in this Reference case 68/2008/Ref. 95/2004 (old) for treating as evidence on behalf of the 1st party. The s.p. endorsed no objection on this application of the 1st party and the court passed order below Ext. 21 permitted to substantiate evidence by filing C.C. of deposition of Mr. Kapadia in Ref. ITC 95/2008. Then first party files certified copy of deposition by a pursis at Ext. 22.

- (6) In view of the pleadings and the oral and documentary evidence of the parties, the following issues have been taken up for discussion, consideration and arriving at decision in this case.

ISSUES

- (i) Whether the reference is maintainable?
- (ii) Has the second party valid cause of action to raise the dispute?
- (iii) Whether the second party Shri Chandrakant A. Solanki engaged by the LIC Divisional office, Ahmedabad is a workman?
- (iv) Whether his termination of service is legal and justified without following the provision of Sections 25 F, 25 G or 25 H of the ID Act?
- (v) Whether the second party is entitled to the relief of reinstatement and back wages?
- (vi) What orders are to be passed?

FINDINGS

(7) ISSUE NO. III & IV

The second party deposed at Ext. 17 that he joined as messenger in August 1994 and his duty hours were 10.45 a.m. to 5.30 p.m. he had to deliver the posts from H.O. to branch office Vastrapur Vasna, Paldi and Isanpur. He also deposed Bharatbhai and Narshibhai Solanki were also working as messenger. He had to go to deliver post from H.O. to branch office on bicycle and he had carry post from branch office to H.O. by taking signature on delivery book of branch offices and also at H.O. He was paid Rs. 50 per day. He was working on permanent nature of post. He was terminated on 20-02-1996 without notice or notice pay in lieu of notice. During cross-examination 1st party has challenged the second party duty hours by saying that there was not duty hours for him and that he had to deliver post as curier according to his convenience and that for service he was paid through vouchers. On the other hand the evidence

of 1st party corporation witness at Ext. 24 is that the second party and Bharatbhai Nanjubhai Ghughal were engaged on temporary work without following the rules and procedure of recruitment. There is no practice in 1st party corporation to employ employees on temporary, daily wages or casual worker, whenever requirement arises such type of persons can be appointed. The power to appoint on permanent post in corporation vest in Divisional Head and the power to appoint on casual temporary and daily wage vest in the Department Head. He stated that the second party was doing the work of delivering the post and was paid lumpsum remuneration for the days on voucher taking his signature. The duty of messenger are to deliver post from H.O. The 1st party witness admitted contents of Ext. 10 and 12 filed by the 2nd party. He also admitted Ext. 8/8 voucher on which remuneration was paid to the second party.

(8) From Ext. 10 it does not appear that the second party had been engaged as messenger on permanent post. It is a correspondence from Naroda branch to the Manager O.S. Department D.O. Ahmedabad as to requirement of daily services of messenger to deliver post since the messenger any either thrice or even one in week, resulting in accumulation of various posts, statements, etc. Ext. 12 is noting of O.S. department regarding need of three messenger service whereas presently two are working for delivery of post to and from H.O. to B.O. and B.O. to H.O. This does not also go to show that engagement of messengers was on permanent post. As it has been stated by witness of 1st party that there is no post of messenger in the 1st party corporation. The vouchers at Ext. 10 and 11 in the name of second party Chandrakant A. Solanki regarding payment of remuneration of Rs. 700/ @ of Rs. 50 per day. This does not go to connect that the second party was engaged as temporary employee of the 1st party corporation.

(9) Only admitted position is that the second party and two others were engaged as messengers but the 1st party corporation on remuneration of Rs. 50 per day to deliver post from H.O. to branch offices lying in the different zone of Ahmedabad city and also to collect posts etc. from branch offices for delivery at H.O. so the nature of work of the second party does not attract to be engaged as daily rated worker/casual worker to join duty at H.O. during duty hours appears more to be the service of curier to deliver post either daily or thrice in a week. The second party in his evidence *vide* Ext. 17 admitted that he was not paid wages on wage register rather was paid wages on

voucher. He also admitted during cross-examination that for his appointment there was no advertisement in newspaper. He was not given any appointment order. He was being paid on actual working days. Regarding gainful employment he has stated that in his family there are two members and he had to spend monthly Rs 1500-2000 to which he himself provide for survival of family so it appears that after alleged termination. Second party is earning adequate amount and is not unemployed.

(10) From making scrutiny of the evidence oral and documentary, I find that the second party could not have been able to establish that he was a workman of the 1st party corporation as defined u/s. 2 (s) of the ID Act. Instead it goes to show that the second party was self-employed and getting remuneration by vouchers on the service of being a curier to deliver posts from H.O. to B.O. and from B.O. to H.O.

(11) Even if it is presumed for the sake of argument that second party is workman, even then he is not entitled to get any relief as prayed for because, the second party has failed to establish the alleged breach of Sections 25-F, 25-G and 25-H of the ID Act. The provision of Sections 25 F only come in picture when second party establishes that he completed 240 days of work in 12 month preceding his alleged termination. As per catena of decision of the Hon'ble Apex Court, the burden lies upon the second party to prove that he has completed 240 days in 12 months preceding to his date of termination. More so the second party Chandrakant A. Solanki either in his statement of claim (Ext. 4) or in his oral evidence (Ext. 17) has stated a single word that he has completed 240 days of work in calender year. In such view of the matter non production of vouchers by 1st party corporation as per explanation that vouchers are very old and could not have been traced out does not call for drawing adverse inference against the 1st party as argued on behalf of second party to draw adverse inference, owing to the reason that the s.p not specifically pleaded that he completed 240 days of work in calendar year preceding to date of termination and also not a single word uttered in his deposition (Ext. 17).

(12) The case laws relied upon by the learned counsel of the second party (1) in Gopal Krishnaji Ketal Vs. Md. Haji Latif (AIR 1968 SC 1413), (2) Ratansingh V/s Union of India [1997 (11) SCC-396.] (3) Municipal Corporation of Delhi V/s. Pravinkumar Jain (1998 (11) LLJ. 674, 4) All India Radio V/s. Santosh Kumar [1998 (78) FLR 814, 5] Rajniben P. V/s. Executive Engineer, Unja irrigation

Division [1998 (2) GLH. 16] have got no application in the instant case on violation of provision of Section F of I.D.25 Act. Further the case law relied upon by the second party in case of Baleshward Dat and Other V/s. State of U.P. [AIR 1981 P 41] is also not applicable since the 2nd party has failed to establish that he is workmen defined u/s 2(s) of the I.D. Act. Likewise the case law of Patwardhan case (AIR 1977 S.C) 2051 and Chauhan's case (AIR 1977 SC 251) are also not applicable in the instant case. The case law of D.K. Yadav's V/s. J.M.A. Industries Limited (1993 LLN-2-275) is also not applicable in the instant case.

(13) On the other hand Shri K.V. Gadhia, Learned Counsel for the 1st party corporation has relied upon the case law of Halvad Nagarpalika and Others V/s. Jani Dipakbhai Chandrevadanbhai and Other [2003 II GHJ 397 (Guj H.C.)] that class IV employee recruitment according to rule is a must and that provision of Section-25F cannot be invoked in the case of daily waged employee whose appointments are without following the due procedure laid down in the statutory or recruitment policies. He has also relief upon case law of State of U.P. and Others V/s. Rekha Rani (2011 II CLR 17) on the point that on temporary employees not selected and appointed on a sanctioned post when terminated from services cannot have any right to the post and cannot be granted the relief of reinstatement and consequential benefits. The 1st party has also relied upon a case law of G.M. Tanda Thermal Power Project V/s. Jai Prakash Shrivastav & Another (2008 LLR 30 S.C.) on the point reinstatement of workmen by a labour court is liable to be quashed when they were engaged for a short period that too not by the competent authority but by an officer in order to meet certain contingencies.

(14) The case laws relied upon by the 1st party appears to be tenable to support the 1st party corporation case.

(15) Thus as per discussions and consideration made above to the oral and documentary evidence and also on perusal of case laws cited by the parties, I find and hold that the second party Shri Chandrakant A. Solanki engaged by the LIC Divisional Officer, Ahmedabad is not a workman as defined u/s. 2(s) of the I.D. Act, 1947. I further find and hold that his termination of service by oral order of 1st party for discontinuing from the work of a courier to deliver posts from H.O. to B.O. and B.O. to H.O. is legal and justified and there was no need to comply with the provisions of 25-F or 25-G or 25-H of the I.D. Act.

(16) ISSUE NOs. I & II

In view of the findings to issue Nos. III & IV in the foregoing, I further find and hold that the reference is not maintainable and the second party has no valid cause of action to raise dispute.

(17) ISSUE NOs. V & VI

In view of the findings to issue Nos. I, II, III & IV in the foregoing, I further find and hold that the second party Shri Chandrakant A. Solanki is not entitled for the relief of reinstatement and back wages or any other consequential benefits. So the following order is passed in this case.

ORDER

This reference is dismissed on contest. No order as to cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2012

का.आ.3468.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1352/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-10-2012 को प्राप्त हुआ था।

[सं. एल-12011/108/2007-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 29th October, 2012

S.O. 3468.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1352/2008) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 15-10-2012.

[No. L-12011/108/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

Present: SRI A.K. RASTOGI, Presiding Officer.

Case No. I. D. 1352/2008

Registered on 11.2.2008

4292 GI/12-15

Shri Jagannath
 C/o Sh. A.I. Chopra President,
 All India Central Bank of India Employees Union,
 129, Lal Kurti, Ambala Cantt,
 Haryana. Petitioner

Versus
 The Regional Manager,
 Central Bank of India, Rohtak Respondent

APPEARANCES

For the workman : Sh. B.S. Gill A.R.

For the Management : Sh. H.C. Chawla.

AWARD

Passed on October 8, 2012

Central Government vide Notification No. L-12011/108/2007-IR(B-II) Dated 1-2-2008, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Central Bank of India, Rohtak denying of promotion to the post of Asstt. Manager to Sh. Jagannath special assistant w.e.f. 9-10-2006 is just, legal and fair? If not to hat relief the workman is entitled to?"

The case of the claimant is that while working at Dahina Branch of the Bank as Special Assistant he was forced by Branch Manager to perform some duties which were outside his service conditions, under the threat of disciplinary action. While serving at the said branch his promotion orders were released by the higher management but the branch manager withheld the promotion order and did not give him the letter to report for place of posting. On the contrary a letter of refusal was secured under threat and coercion by the management. The said letter has no legal sanctity and amounts to unfair labour practice. When the claimant raised his voice for promotion he was charge-sheeted. He has claimed his promotion w.e.f. 9-10-2006 when his counter-parts were promoted and has claimed salary and other benefits of the promotional post from the same date.

The claim was contested by the respondent-bank and it was said that the claimant of his own will had given the said refusal letter. It was vehemently denied that the refusal letter had been obtained under the threat of disciplinary action. The disciplinary action was initiated against the workman subsequently on account of misconduct. It was also denied that promotion order was withheld by the Branch Manager and it was further stated that the promotion was offered to the claimant and he instead of accepting the same gave the refusal letter. According to the management there is no unfair labour practice involved

in the matter. The claimant is not entitled to promotion, salary or other benefits and the claim deserves to be dismissed.

The claimant filed a rejoinder to say that he had been called at Regional Office, Rohtak to take refusal letter from him. He was very much interested in his promotion as it is clear from his representation sent on 14-9-2006 to the Zonal Office wherein he had requested for his posting on promotion at a place near to his present place of posting.

In support of his claim the claimant examined himself and management has examined Branch Manager, R.P. Siroha. Beside the oral evidence, the parties relied on certain papers also which well be referred at proper place.

The parties have filed the written arguments which were perused by me. I have gone through the evidence on record. The management case is that the promotion order of the claimant was not given effect in view of his refusal letter dated 29.9.2006 Ex. R3 wherein he had expressed his inability to accept his promotion on account of his family circumstances. The AR of the claimant, on the other hand, argued that the letter of the refusal had been obtained from the claimant under the threat of disciplinary action and therefore it was not a valid refusal; secondly, promotion order was never delivered to the claimant and thus promotion was never offered to him; therefore the alleged refusal letter is in anticipation of the promotion and for this reason also the management is not right in acting on this letter.

The plea that the refusal letter Exhibit R3 had been obtained by management under the threat, appears to be false and concocted. The claimant in his statement has admitted this letter to be in his handwriting and under his signature. He has stated that he had written this letter on the dictation of ARM. He further stated that he could not complain any authority about the behaviour of ARM as he was frightened. In the first place, in the evidence there appears no reason for an officer of the level of ARM to obtain such a letter from the claimant. Moreover there appears no occasion for the claimant to visit the office of the ARM. management-witness R.P. Siroha was the Branch Manager at the relevant time. He has stated that he had received the order of promotion of the claimant and had delivered the same to him and that he had offered promotion to the claimant according to the letter but instead of giving any acknowledgment, the workman gave him a refusal letter and he had sent the letter of the workman to the Regional Office. From the statement of the witness it is clear that the refusal letter was given by the claimant at the Branch office and nothing took place in the office of the ARM or in the presence of ARM in relation to the letter Exhibit R3. The plea that this letter was obtained from the claimant under the threat of disciplinary action is simply not acceptable.

The argument that since the claimant was not offered promotion till the alleged letter was written by the claimant

hence it could not have been acted upon, also carries no force. It is clear from the statement of management-witness that he had delivered the promotion orders to the workman but instead of acknowledging the same claimant had given the refusal letter Exhibit R3. I cannot agree with the argument of the AR of the claimant that the Branch Manager should have made a note like 'refused to receive the order' on the promotion order itself. There is a noting on the promotion letter *i.e.* Exhibit R1, of the management-witness and the witness had returned the promotion letter to the Regional Office along with refusal letter for further action. Under the circumstances there was no need of making any endorsement "refused to receive" on the promotion letter.

From the evidence on record the reason for refusing the promotion also appears. Exhibit R6 is the copy of the letter of the workman sent to the Zonal Manager. Through this letter he had requested the Zonal Manager to post him in Rohtak region as he had social responsibility to look after his 84-years-old father who was unable to move from the bed. This also shows that the workman had the knowledge of the offer of his promotion and his letter Exhibit R3 was an act on his part after the offer of promotion. I therefore find no merit in the claim of the claimant. The action of the management of Central Bank of India in denying the promotion to the claimant is based on the refusal letter Exhibit R3 of the claimant himself and therefore is just, legal and fair. The workman is not entitled to any relief. Reference is answered against the claimant. Let two copies of the award be sent to Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2012

का.आ.3469.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 36/2004—) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/83/2004-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 29th October, 2012

S.O. 3469.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 36/2004) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and the workman, which was received by the Central Government on 17-10-2012.

[No. L-12012/83/2004-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 36/2004

Registered on 30.11.2004

Shri Ravi Kant

S/o Sh. Kesho Ram

58, The Mall,

Ambala Cantt (Haryana)

... Petitioner

Versus

The Zonal Manager,

Punjab and Sind Bank,

Zonal Office, 17-B,

Chandigarh

.... Respondent

APPEARANCES:

For the Workman : Sh. H.S. Hundal Advocate.

For the Management : Sh. Sapan Dhir Advocate.

AWARD

Passed on September 26, 2012

Central Government *vide* Notification No. L-12012/83/2004 (IR(B-II) Dated 18-8-2004, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Punjab and Sind Bank in terminating the services of Sh. Ravi Kant S/o Kesho Ram, Ex-Peon w.e.f. 14-1-2002 is legal and just? If not, what relief the concerned workman is entitled to and from which date?"

The claimant's case is that he was appointed in the Bank's service w.e.f. 9.6.1998 at Sector 8 Branch, Chandigarh on the post of Peon. He worked from 9-6-1998 to 19-1-2002 continuously for 1320 days and was entitled to the protection of Section 25-F of the Act but his services were terminated by the Bank in violation of Sections 25-F, 25-G and 25-H of the Act. The vacancy against which the claimant was working was of permanent nature and after his termination a new Peon was appointed.

The claim was contested by the management and it was alleged that the workman had been engaged without following the procedure of making regular appointments and that too by the person who was not authorized to engage him. He had been appointed by a Branch Manager and the claimant was a back door entry. He has no right to continue in service. He is not entitled to the protection of Section 25-F of the Act.

The workman filed a replication to say that he had been appointed with the concurrence of the Zonal Office, Chandigarh; the vacancy against which he had been appointed was of permanent nature; he had been appointed after proper interview and he was not a backdoor entry.

In evidence, the workman, besides himself, examined Paramjit Singh, Manager, Head Office, Personnel Department, Punjab and Sind Bank, New Delhi. While on behalf of management Sukhwinder Singh Manager and S. Balkar Singh were examined. Workman relied on certain papers also.

None appeared on behalf of the management to argue the case despite several adjournments. I heard the learned counsel for the workman and perused the evidence on record.

It is not denied that the claimant was in the employment of the respondent. It is also not denied that he worked from 9.6.1998 to 19.1.2002 till his services were terminated. For the adjudication of the reference I need not to enter in the controversy whether the workman had been appointed against a permanent or temporary vacancy. Whether permanent or temporary the fact remains that the claimant was a workman under the Act as per law down by the Hon'ble Supreme Court in Devinder Singh Vs. Municipal Council, Sanaver 2011 LAB 1C 2749. The workman witness Paramjit Singh Manager Personnel Department of the Head Office produced the list of the temporary Peons which had been summoned by the workman. The name of the workman appears at Serial No. 226 in the Chandigarh Zone list (paper No. 61) as temporary Peon. It is thus clear that the claimant is a workman and has worked from 9.6.1998 to 29.1.2002 i.e. four years continuously. His services could not have been terminated without following the procedure provided under Section 25-F of the Act. The protection of Section 25-F of the Act cannot be denied to the workman on the ground that he was appointed without following the due procedure and by an officer not competent to appoint. It may be also mentioned that it has not been brought on record as to what is the procedure for the appointment of the temporary Peon and who is competent to make such appointments. The list produced by the workman-witness Paramjit Singh marked (A); shows that the name of the workman had not been sponsored through Employment Exchange. Column No. 7 of the list shows that the workman had been engaged in the leave vacancy of a permanent workman or to cope with the additional work of temporary nature. In the workman's case it appears that he had been engaged to cope with the additional work of temporary nature. His employment was not need-based not it was of casual nature. He worked for about four years. The law laid down in Himanshu Vidyarthi case is not applicable here. The

reference is not about the regularization of the service of the workman. The reference is regarding the justification of the termination of the workman and from the above going discussion it is clear that the termination of the services of the workman is not legal and just as it is in violation of the Section 25-F of the Act. It is settled law that since his termination is invalid and non-est he is entitled to be treated in service and service benefits including back wages.

It may be mentioned here that it is not the case of the work that he remained without work after the termination and the management also has not stated that the workman gainfully employed during the period. Definitely he must have earned to live a life though it may not be gainful. I therefore find him entitled to get 50 per cent of the back wages. The reference accordingly is answered in favour of the workman. The action of the Bank-management in terminating his services w.e.f. 14.1.2002 is not legal and just one is non-est. He will be treated to be continuing in service and will be taken back on duty within one month of the publication of the award. He is also entitled to 50 per cent of the back wages. Let a copy of this award be sent to the Central Government and one copy of the award be sent to District Judge, Chandigarh for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2012

का.आ. 3470.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 102/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2012 को प्राप्त हुआ था।

[सं. एल-12011/3/98-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 29th October, 2012

S.O. 3470.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 16-10-2012.

[No. L-12011/3/98-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL No. 1, KARKARDOOMA COURTS
COMPLEX, DELHI

ID No. 102/2011

The General Secretary,
All India New Bank of India Emps. Federation,
Central Office, C/o PNB, L-Block, Connaught Circus,
New Delhi-110001 ... Workman

Versus

The General Manager,
P.N.B., Head Office,
Bhikaji Cama Place,
New Delhi ... Management

AWARD

New Bank of India made huge losses. Considering its financial position, the Central Government in consultation with the Reserve Bank of India decided to merge it with the Punjab National Bank (hereinafter referred to as the bank). Consequently a notification dated 4-9-1993 was issued, and New Bank of India was merged with the bank. At the time of its merger, New Bank of India had one headquarter, 16 regional offices, two training centers and 591 branches. After its amalgamation with the bank, the bank decided not to have more than one head office or regional office at one and the same place. Numbers of employees had become surplus. Therefore, the bank framed two sets of re-deployment guidelines both dated 16-9-1993, one for officers and the other for award staff of erstwhile New Bank of India. Guidelines framed for re-deployment of officers of erstwhile New Bank of India had been subject-matter of challenge before High Court of Delhi in Civil Writ Petitions No. 46512, 4822 and 4835 all of 1993 which were dismissed on 5th October, 1993, 28th October, 1993 and 15th October, 1993 respectively.

2. All India Punjab National Bank Workers Federation (in short the Federation) challenged re-deployment guidelines before High Court of Judicature at Allahabad by way of Writ Petition No. 39883 of 2003, which was granted by the High Court vide order dated 11-11-1993. A special appeal was filed by the bank, wherein an interim order was passed on 20-11-1993. However, the concerned employees were given discretion to comply with impugned transfer orders. None of re-deployed employees complied with transfer orders. Appeal was dismissed by the High Court vide its order dated 24-1-1994. The bank preferred Special Leave Petition before the Apex Court wherein status quo order was passed. After converting special leave petition to a civil appeal the Apex Court granted the appeal and dismissed writ petition filed by the Federation vide its order dated 11-2-1997.

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3. After disposal of the appeal by the Apex Court, employees of erstwhile New Bank of India made representations to the bank to cancel their transfer orders, which representations did not find favours with the bank. They were asked to report for duties at the places where they were transferred. On joining their duties, period of litigation was considered as not spent on duty and as such, their salary for that period was not sanctioned. Seniority, increments, special allowance and other facilities were not granted to them for the intervening period. The Federation raised a demand for release of their salary, increment, special allowance, seniority for the intervening period, which demand was rejected by the bank. Feeling aggrieved, the Federation raised a dispute before the Conciliation Officer. The bank contested the claim made by the Federation and as such conciliation proceedings failed. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-12011/3/98/IR(B-II) New Delhi dated 18-12-1998, with following terms:

“Whether action of the management of Punjab National Bank in not sanctioning/releasing salary, seniority, increments, special allowance, CCA, HRA, LFC, medical aid and other facilities to the workmen of erstwhile New Bank of India for the intervening period after formulation of the transfer policy dated 16-11-1993 to the date of their joining to the places which had been under litigation before the Hon’ble Supreme Court of India is legal and justified? If not, to what relief workmen of erstwhile New Bank of India are entitled?

4. Claim statement was filed by the General Secretary of the Federation, pleading that the Federation represents majority of the employees of erstwhile New Bank of India, working in different branches/offices in different States. Erstwhile New Bank of India had granted recognition to the Federation in 1971. Pursuant to the notification issued by Ministry of Finance, Banking Division, Government of India, New Delhi, New Bank of India was merged with the bank on 4-9-1993. Thereafter the bank adopted a policy of step-motherly treatment to the employees of the erstwhile New Bank of India and formulated discriminatory and vindictive transfer policy dated 16-9-1993 for their deployment. Mass transfer of employees of erstwhile New Bank of India were effected throughout the country to remote and far flung places.

5. The Federation pleads that transfer guidelines dated 16-9-1993 were challenged by way of Writ Petition before Allahabad High Court as well as in other High Court/Courts for getting it declared as discriminatory, vindictive and arbitrary. Allahabad High Court granted interim stay on 1-11-1993 against implementation of transfer guidelines. Despite interim stay granted by Allahabad High Court,

the bank effected transfer of more than 500 employees from Delhi and about 1000 all over India. By its order dated 11-11-1993, Allahabad High Court quashed guidelines framed by the bank. Affected employees represented to the bank for reconsideration of their transfer orders and to allow them to join back in respective branches/offices from where they were transferred. Instead of complying the orders dated 11-11-1993, the bank filed an appeal before the Division Bench. The Division Bench had granted an interim order in favour of the bank. Later on the High Court dismissed the appeal vide its order dated 24-1-1996. All affected employees represented again in writing to the bank to allow them to join their respective branches/offices from where, they were transferred. Instead of considering the representations made by the employees, the bank preferred a Special Leave Petition to the Supreme Court of India. On 11-3-1996 the Supreme Court granted interim order of status quo. Ultimately on 11-2-1997 the Supreme Court granted the appeal. All affected employees again represented to the bank for cancellation/modification of their transfer orders. However, their representations were rejected, without giving any cogent reasons.

6. The Federation further pleads that the bank had given step motherly treatment to its employees, on their joining respective branches, in the matter of release of their salary, seniority, increments, special allowance, CCA, HRA, LFC, medical aid and other facilities available to them for the intervening period from the date of transfer, in violation of guidelines dated 16-09-1993. Not only seniority of the employees was not taken into account for grant of aforesaid facilities but the bank had made them to suffer for no fault of theirs. They were deprived of their legitimate and genuine rights. It has been claimed that the bank may be directed to sanction and release salary, seniority, increments, special allowance, CCA, HRA, LFC, medical aid and other facilities for the intervening period after formulation of transfer policy dated 13-09-1993 to the date of their joining at their respective places of transfer.

7. Claim was demurred by the bank pleading that the reference made to this Tribunal is fait accompli, since it stands adjudicated vide order dated 11-09-1997, passed by the Apex Court in Civil Appeal No. 474/1997. It has further been pleaded that the industrial dispute has not been validly espoused. Since members of the Federation did not attend to their duties, for the intervening period from the date of their transfer till they reported at their respective places, they are not entitled to salary, seniority, increment and other allowances. Re-deployment order stood upheld by the Apex Court and as such the Federation cannot find fault with that order. Now it does not lie in the mouth of the Federation to contend that the bank is liable to release salary and grant seniority etc. to its members, who did not attend to their duties and remained absent for a considerable long period. Claim put

forward by the Federation is not maintainable, being devoid of merits. The bank claims that an award may be passed in its favour.

8. Parties opted not to adduce any evidence in the matter.

9. Vide order No.Z-22019/6/2007-IF(C-II), New Delhi dated 11-02-2008, the appropriate Government transferred the case to Central Government Industrial Tribunal No. 2, New Delhi, for adjudication.

10. Appropriate Government retransferred the matter to this Tribunal for adjudication vide order No. L-12011/3/98/IR(B-II), New Delhi dated 30-03-2011, for adjudication.

11. Arguments were heard at the bar. Shri J.N. Kapoor, authorized representative, advanced arguments on behalf of the Federation. Shri Rajat Arora, authorized representative, presented facts on behalf of the bank. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

12. In its written statement, the bank pleads that the dispute has not been validly espoused. Therefore it is to be considered as to whether the dispute is an industrial dispute. For an answer to this proposition it is expedient to know the definition of industrial dispute, as contained in clause (k) of Section 2 of the Industrial Disputes Act, 1947 (in short the Act), which is reproduced thus:

(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

13. The definition of "industrial dispute" referred above, can be divided into four parts, viz (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject-matter of the dispute, which should be connected with - (i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

14. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties

to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of Section 2 of the Act.

15. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the, workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workman as a class.

16. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of Section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employer, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

"We also agree with the expression "any person" is not co extensive with any workman, particular or

otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in, whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

17. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company (1970 (II) LLJ 256), the Apex Court referred the precedent in Orona Kuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

18. The term, 'industrial dispute' conveys meaning that the dispute must be such as would affect a large group of workmen and employer, ranged on opposite sides. Applicability of the Act to an individual dispute, as distinct from the dispute involving group of workmen, is excluded, unless the workmen as a body or a considerable section of them, make a common cause with the individual workman. The scheme of the Act contemplates that the machinery provided therein should be set in motion to settle only such disputes as involving right of workmen as a class and that the dispute touches individual rights of the workman, was not intended to be subject of adjudication. Even a single employee's dispute may develop into an industrial dispute, when it is taken up by the union or a number of workers to make concerted demand for redress. Law to this effect was laid in Raghunath Gopal Patwardhan [1957(1) LLJ 27], Newspapers Ltd. [1957(2) LLJ 1], Bombay Union of Journalists [1961(2) LLJ. 436], Dharma Pal Prem Chand (Saugandhi) [1965(1) LLJ 668] and Western India Match Company Ltd. [1970(2) LLJ 256].

19. As projected above, the present dispute relates to release of salary, seniority, increments, special allowance, CCA, HRA, LFC, medical aid and other facilities to the employees of the bank, who opted not to join their duties on formulation of transfer policy dated 11-11-1993 till date the matter was adjudicated by the Apex Court. Thus, it is apparent that the workmen as a class are interested in adjudication of the dispute. Since the present dispute is an industrial dispute, no espousal is needed to raise it for adjudication. This dispute was raised by the Federation before the appropriate Government. It was well conceived by the appropriate Government that the dispute relates to the workmen as a class. Consequently, it does not lie in the mouth of the bank to assert that the dispute has not been validly espoused. Contention raised by the bank in that regard is discarded.

20. As projected by the bank and not disputed by the Federation, transfer guidelines dated 16-09-1993 were upheld by the Apex Court, vide its order dated 11-09-1997. Now it does not lie in the mouth of the Federation to question those guidelines. It would be in the fitness of things to reproduce the observations made by the Apex Court in its order referred above, which are extracted thus:

“If it was the intention of the Central Government that PNB should not deploy or transfer any employee of NBI till the placement scheme was made, it would have made an elaborate provision in that behalf in the placement scheme. Instead we find that with, respect to deployment/transfer only a general provision has been made in Paragraph 3 of the scheme. Moreover, the said provision appears to have been made out of abundant caution. Even in absence of such a provision employees of NBI after they became employees of PNB could have been transferred by PNB subject to the service regulations and the existing awards and settlements. No employee of NBI could have thereafter successfully contended that PNB had no power to transfer them. So, the provision with respect to the transfer of workmen-employees was made in the placement scheme so as to remove any doubt, if any, with respect to the power of PNB to redeploy or transfer them to any of the offices or branches of PNB. When the Central Government provided in the placement scheme that redeployment or transfer may be made considering the suitability of the officer/employee, administrative exigencies and manpower requirements of PNB it did not fix any fresh or different norm for that purpose. Therefore, the said provision appears to have been made more by way of protection against discrimination rather than by way of fixing the principles and norms for their transfers. The only restriction placed on the power of PNB with respect to redeployment or transfers of the officers and workmen-employees of NBI is

that the postings/transfers of workmen-employees will have to be made within the same linguistic area. Thus, we do not find anything in Paragraph 3 of the placement scheme which would indicate that redeployment/transfers of the officers/workmen-employees of NBI were not contemplated by the Central Government till the placement scheme was framed by it.”

.....

.....

“We are, therefore, of the view that the High Court was wrong in declaring the transfer orders of employees of NBI as bad on the ground that till the placement scheme was framed by the Central Government PNB had no power or authority to redeploy or transfer them.”

.....

“In the alternative, it was contended that the said guidelines being contrary to the statutory amalgamation and placement scheme cannot have the effect of validating the action taken by PNB under the said guidelines. These contentions, in our opinion, are misconceived as they are based upon an erroneous reading of the provision made in paragraph 5(2) of the Amalgamation Scheme with respect to its true nature and effect, which we have pointed out earlier. The Amalgamation Scheme did not deny the power of an employer to PNB to effectively and economically utilise its manpower and to make transfers when found necessary”.

.....

“As rightly submitted by Mr. Reddy, learned Additional Solicitor General, relying upon the decision of this Court in Syndicate Bank, Ltd. and its workmen 1966 (1) LLJ 440 that there can be no doubt that the banks are entitled to decide on a consideration of the necessities of banking business whether the transfer of an employee should be made to a particular branch and that the management is in the best position to judge how to distribute its employees between the different branches. Therefore, the action of framing guidelines and then effecting transfers in accordance therewith cannot be said to be inconsistent with or contrary to the statutory amalgamation and placement schemes.”

.....

“In support of his contention that in cases where both the transferor and transferee are State or State

instrumentalities, it is open to the court to review whether the terms and conditions of the transfer ensure "fairness in action" and non-arbitrariness, Dr. Dhawan relied upon the decision of this Court in Gurmail Singh v. State of Punjab. Though "fairness in action" is now an established test to judge the validity of actions of State or State instrumentalities, we do not find, even after applying that test, that the impugned action of PNB was either arbitrary or discriminatory".

"It was rightly contended. by Mr. Reddy, learned Additional Solicitor General, relying upon the decision of this Court in Union of India v. D. Mohan (1953 3 SSC 115) that where service of an employee is transferable even though within a limited area, in special circumstances, he can be transferred outside that area. We are of the view that the respondents have failed to establish their case of discrimination. On the contrary, we find that PNB has acted in a fair manner".

"On behalf of the respondents it was contended that Paragraph 5(2) of the Amalgamation Scheme protected the terms and conditions of service of the employees of NBI. Therefore, even after the officers and workmen employees of NBI became the officers and workmen employees of PNB they retained their earlier terms and conditions. In view of the transfer policy of NBI and the awards and bipartite settlements between NBI and its employees the workmen employees could not be transferred outside their stations. It was also submitted that though the Shastri Award recognises the right of the banks to transfer its employees it had really no relevance in view of the provisions made in the Amalgamation and Placement Schemes which are statutory in nature. Therefore, reliance placed by the appellant on the Shastri Award was misplaced. It was also submitted that in Paragraph 536 of the Shastri Award it is clearly mentioned that so far as members of the subordinate staff are concerned there should be no transfers ordinarily and if there are any transfers at all they should not be beyond the language area of the persons so transferred. In this behalf Dr. Dhawan drew our attention to the Office Order dated 27th February, 1989 issued by the New Bank of India to its Regional Offices whereby their attention was drawn to its earlier Circulars dated 7-5-87 and 29-6-88 with respect to rotational transfers of staff and thereafter they were instructed to follow the guidelines laid down in that order while effecting

such transfers. According to those guidelines, in case of workmen staff, the transfers were to be effected with the same station. It was further provided that in case of rotational transfers of surplus workmen staff they should be deployed at the same station only. On a careful reading of the said order what we find is that it lays down guidelines for effecting rotational transfers of staff. The transfers under challenge were not rotational transfers. They were really in the nature of redeployment of surplus staff. Therefore, those guidelines even if they are treated as a part of terms and conditions of their service, being not applicable, cannot make the impugned transfers bad. Though the petition and the learned Counsel for the respondents have referred to certain awards and bipartite settlements nothing in particular was pointed out to show that the workmen employees of NBI could, under no circumstances, be transferred outside their stations. Our attention was also drawn by Dr. Dhawan to the guidelines issued by PNB with respect to transfer of its staff. We find that they also pertain to rotational transfers and, therefore, the respondents cannot derive any benefit from it in their challenge to the deployment on being rendered surplus as a result of the amalgamation".

21. There are no two opinion that the employees of erstwhile New Bank of India opted not to respond to their respective transfer order made by the bank on the strength of transfer guidelines dated 16-11-1993. They waited for the outcome of the litigation. There were ups and downs, when orders were passed by the High Court of Delhi and High Court of Judicature at Allahabad. Option to join of respective places of their transfer was open. But members of the Federation opted not join their duties. They remained absent from their duties. For such a situation, miscellaneous instructions issued by the bank, relating to leaves available to its employees, are to be considered. The instructions relating to leaves project that extraordinary leaves are to be granted on loss of pay.

22. The instructions relating to leaves make it clear that no pay and allowance are admissible during period of extraordinary leave and the period spent on such leaves shall not count for increments and seniority/length of service and to that extent it has effect of shifting of increment. However, in certain situations, where sanctioning authority is satisfied that the extraordinary leave was taken on account of illness or in any other case beyond the control of the employee, he may direct that the period of extraordinary leave may count for increments. Thus, it is evident that in case of extraordinary leaves, an employee shall not earn increments for such leaves nor he will get seniority/length of service counted and it would have effect of shifting his date of increment. Members of the Federation remained absent for about four years.

Hence it is evident that their position is worse than the position of an employee who happens to be on extraordinary leave on losse of pay. Consequently it is crystal clear that members of the Federation will not get pay or allowance for the period of their absence and it will not count for increments seniority/length of service. Considering that proposition, it emerges that members of the Federation are not entitled to pay and allowances for the period of their absence from duty. They will not earn any increments, during that period. They are not entitled to reckon their period of absence towards length of their service/seniority.

23. In view of reasons detailed above, members of the Federation are not entitled to salary, increments, special allowance, CCA, HRA, LFC, medical aid and other facilities for the period they remained absent from duties. They are also not entitled to reckon their period of absence towards length of service/seniority. Resultantly, action of the bank in not according pay and allowances and other benefits to the employees, who remained absent from their duties and opted not to join at respective places where they were transferred as per transfer policy of 16-11-1993 to the date of their joining after precedent was handed down by the Apex Court on 11-02-1997, is found to be legal and justified. Members of the Federation, are not entitled to any relief. Claim put forward is liable to be discarded. Accordingly, claim filed by the Federation is dismissed. An award is passed in favour of the bank and against the Federation. It be sent to the appropriate Government for publication.

Dated: 06-09-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2012

का.आ. 3471.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सीजीआई.डी सं. 348/1999) को प्रकाशित करती हैं जो केन्द्रीय सरकार को 05-10-2012 को प्राप्त हुआ था।

[सं. एल-39025/1/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 29th October, 2012

S.O. 3471.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. C.G.I.D. No. 348/1999) of the Central Government Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute

between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 05-10-2012.

[No. L-39025/1/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, CHENNAI

Present: Thioru K. Jayabalan, B.Sc., B.L.,

Presiding Officer

Monday the 13th day of August, 2012

C.G.I.D. No. 348 of 1999

Thiru M. Gunasckaran,
S/o Muthukkannu,
No. 9, Thideerkuppam,
Neillikupparn-607 105.
Cuddalore District.

...Petitioner.

Versus

The Canara Bank,
Assistant General Manager,
Circle Office,
563/1, Anna Salai,
Teynampet, Chennai-600 018.

...Respondent.

This dispute coming on 18.7.2012 before me for final hearing in the presence of M/s. Balan Haridas & Kamatchi Sundaresan counsel for the petitioner and of Thiru T.R. Sathiyamohan counsel for the respondent and upon perusing the material papers on records and upon hearing their arguments and having stood over for consideration till this day, this court delivered the following:

AWARD

This dispute has been raised under Section 2-A(2) of the Industrial Disputes Act, 1947, by the workman seeking reinstatement in service with full backwages, continuity of service and all other attendant benefits.

2. **The case of the petitioner is thus:** The petitioner joined in the respondent Canara Bank during the year 1981 as a clerk. He also worked in the Virudhachalam Branch from 31.7.89 to 17.7.92 and till he left the branch, there was no complaint in respect of his work. The petitioner was suspended from service on 18.7.92 pending enquiry into misconduct alleged to have been committed by him while he was working in Virudhachalam Branch. He was issued with charge sheet on 17.3.1993 in relation to incident on 1.6.1992. The petitioner had fraudulently withdrawn a sum of Rs. 10,000/- from the account of V.L. Vasudeva

Rao S.B. Account No. 7656 which account was dormant for some time. The account holder V.L. Vasudeva Rao came to the Branch on 17.10.92 to deposit Rs. 50 and to update the pass book. While he did so, he found that there was a wrong debit entry of Rs. 10,000 on 1.6.92 and immediately complained to the Manager to look into it. On the said day i.e. on 1.6.92, the petitioner was working as a temporary cashier and five charges were levelled against him.

1. He had unauthorisedly taken a withdrawal slip.
2. After taking the withdrawal slip he filled up the amount in words and figures.
3. The signature correlating stamp and cash payment stamp are deliberately stamped over the other to make the signature illegible.
4. He had written the word 'Pay' and
5. The signature in the withdrawal slip does not tally with the signature of the customer.

The petitioner gave an explanation denying the charges in the domestic enquiry conducted by the Bank 4 witnesses were examined namely, M.W. 1, the Manager of the Virudhachalam Branch, M.W.2, the customer Vasudeva Rao, M.W. 3, the Handwriting expert and M.W. 4, the investigating Officer and M.W. 4 gave report on 9.11.92. The petitioner further submits that his handwriting alone was sent to forensic department apart from that of Vasudeva Rao and no other persons who attended work on that day. The non sending of the handwriting of other persons those who have worked on that day is not in conformity with the principles of natural justice. The disciplinary authority has not considered the crucial evidence of M.W. 3 that he was not able to confirm whether the signature found on the front and back of the withdrawal slip in question tallied with his handwriting. Therefore, the whole enquiry is predetermined, based and one sided and there was not finding as to whether he was deliberately made the signature invisible and as to whether he had written the word 'Pay'. Without giving a finding on any of these issues he has been found guilty and dismissed from service, which is illegal. Even though under bipartite settlement several punishments have been specified, neither the disciplinary authority nor the appellate authority have stated as to why dismissal is the only punishment the petitioner deserves. The petitioner had an unblemished record of service. Therefore, the petitioner prays this court to interfere with

the quantum of punishment U/s 11A of the I.D. Act, 1947 and further he prays to reinstate him with full backwages, continuity of service and all other attendant benefits and render justice.

3. **The case of the respondent is thus:** The respondent Canara Bank is a nationalised Bank and having branches throughout India including Virudhachalam Branch. The petitioner joined in Canara Bank on 15.6.1981 as Probationary Clerk and his service was confirmed on 15.12.1981. He worked at Virudhachalam Branch from 31.7.1989 to 17.7.1992. On 1.6.1992 the petitioner was working in the cash department and on that day a sum of Rs. 10,000 was withdrawn by means of a withdrawal order form in the SB A/c. No. 7656 standing in the name of K.L. Vasudeva Rao. The said Vasudeva Rao went to Virudhachalam Branch on 17.10.92 and remitted a sum of Rs. 50 in his S.B. Account and also tendered the pass book for updation. After updating the pass book, he found that there was a debit entry for Rs. 10,000 dated 1.6.1992 and he disowned the same and he also lodged a complaint with the Virudhachalam Branch Manager about the unauthorised withdrawal of Rs. 10,000 on 1.6.1992 from his S.B. Account. One Thiru Mr. Ramasamy, Senior Manager of the Bank was instructed to conduct a detailed investigation into the matter and after investigation he submitted a report on 9.11.1992 after comparing the signature available in the alleged withdrawal slip dated 1.6.92 and his specimen signature card and he suspected the involvement of the petitioner who was working as cashier at Virudhachalam branch during the relevant day. He found the writing of "ONLY" Rs. 10,000. and the word "PAY" in the alleged withdrawal slip dated 1.6.92 resembled the writing of the petitioner. Further the petitioner admitted that he has put his signature in red ink in withdrawal slip dated 1.6.92 for Rs. 1,000 paid in SB Account No. 6470 in the alleged withdrawal slip also, the word "PAY" and the signature of the petitioner are in red ink. Therefore, the Investigating Officer has clearly stated that the petitioner himself would have put the word "PAY" in the alleged withdrawal slip dated 1.6.1992. Further at the request of the Investigating Officer to find out the correctness, the matter was referred to forensic sciences department by handing over the original documents together with the admitted handwritings of the petitioner. After examination, the forensic sciences

department *vide* their report dated 5.1.93 confirmed that the handwritings on the withdrawal slip utilised for withdrawing Rs. 10,000 is that of the petitioner and not of the account holder. The act of the petitioner was prejudicial to the interests of the Bank and hence charges were framed against the petitioner that he had taken withdrawal order form unauthorisedly from the branch and written token No. figures and account No. in the slip and also unauthorisedly written the word "PAY" on the withdrawal order form and further the withdrawal order form did not bear the ledger folio and initials of the clerk for having posted the same in the ledger sheet pertaining to SB Account No. 7656 and the signature appearing on the withdrawal order form in question did not tally with the signature of the account holder. Thiru K.N. Chinnakrishnan Officer of the Bank was appointed as Enquiry Officer to conduct departmental, enquiry and due opportunity was given to the petitioner to defend his case. The Management has examined 4 witnesses M.W. 1 Thiru G. Muthuramalingam, Manager of Virudhachalam Branch M.W. 2 Thiru K.L. Vasudeva Rao, account holder. M.W. 3 Thiru M. Kasi. Handwriting Expert and M.W. 4 Thiru M.R. Ramasamy, Senior Manager of Canara Bank who has conducted the investigation in this case and as many as 11 documents were marked. Further the petitioner has not examined any witness or marked documents to prove his case and after considering the evidence on record, the Enquiry Officer has found that the petitioner is guilty of charges and thereafter based on the report, the Disciplinary Authority agreeing with the findings of the Enquiry Officer and taking into consideration the gravity of the misconduct and circumstances of the case, the petitioner was dismissed from service. Against the said dismissal, now the petitioner has filed this I.D.

4. The respondent further submits that even though under Bipartite settlement several punishments have been specified, the reason for imposing the punishment of dismissal on the petitioner is that the bank is the custodian of the money of the customers and the cashier is a person who deals with the money and he must be more diligent and honest and justify the trust imposed on him by the bank and by the customers. Further if the customer loses confidence in the dealings, the entire organisation suffers and confidence of the customer is the basis on which the entire edifice of the banking system survives. Therefore, the respondent took the extreme penalty of dismissal

against the petitioner and the same is justified and, therefore, the respondent prays to dismiss the I.D.

5. No oral evidence on both sides. On the side of the respondent Exs. M. 1 to M. 23 have been marked by consent.

6. The points for consideration are:

1. Whether the petitioner is entitled to reinstatement in service with full backwages, continuity of service and all other attendant benefits?
2. To what relief the petitioner is entitled?

7. Points No. 1 & 2: The admitted facts are that the petitioner M. Gunasekaran, joined as Clerk in the Canara Bank during the year 1981 and he worked at Virudhachalam Branch during the period 31.7.89 to 17.7.92 till he left the branch and on 18.7.1992 he was suspended from service pending enquiry into misconduct alleged to have been committed by him while he was working in Virudhachalam Branch.

8. The petitioner endorsed in the petition that he has no oral evidence and he is not questioning the validity of the domestic enquiry and the petitioner is advancing arguments only u/s. 11A of the I.D. Act, 1947 and the respondent also endorsed that they have no oral evidence on their behalf and at their request by consent Exs. M. 1 to M. 23 were marked. However, no documents were marked on behalf of the petitioner. Without oral evidence, based on the pleadings and the documents marked above, both parties arguments were heard.

9. The petitioner does not question the fairness of the enquiry. He wants to submit his arguments only u/s. 11A of the I.D. Act. During enquiry, the petitioner also did not examine any witness. However, the management examined 4 witnesses including the account holder Thiru K.L. Vasudeva Rao, and the handwriting expert Thiru M. Kasi and all the four witnesses were duly cross examined on behalf of the petitioner. Further, the petitioner also filed written submissions before the Enquiry Officer and the same is marked here as Ex. M. 6. After considering the evidence and the documents marked before the Enquiry Officer and the submissions of the petitioner and after giving due opportunity to the petitioner, the Enquiry Officer came to the conclusion that the charges levelled against the petitioner were proved and, therefore, it is held that the enquiry conducted by the respondent against the petitioner for the charges that he has committed a

misappropriation of Rs. 10,000 from the account of Thiru K.L. Vasudeva Rao is fair and proper.

10. The petitioner's counsel would submit that this court can reappreciate the evidence recorded in the domestic enquiry and while appreciating the same, it can substitute its own findings based on merits and further this court can also interfere with the punishment awarded to the petitioner in the circumstances of the case as per section 11A of the I.D. Act. The petitioner would further contend that the Enquiry Officer has failed to see that the handwriting of the petitioner does not tally with the signatures found in the withdrawal slip Q2 and Q3 which is marked as Ex. M. 15 in this case and without knowing that he has signed in the alleged withdrawal slip dated 1.6.1992 (Ex. M. 15). The opinion of the handwriting expert that the word written by the petitioner "PAY" is not sufficient to hold that the petitioner only has misused Ex. M. 15 to withdraw a sum of Rs. 10,000 from the account of Thiru K.L. Vasudeva Rao and, therefore, in the absence of definite evidence that the petitioner only has made writing in Ex. M. 15 withdrawal slip, it cannot be held liable that the petitioner has withdrawn a sum of Rs. 10,000 and, therefore, this court has to hold that the charges levelled against the petitioner in the enquiry have not been proved and the enquiry report has to be rejected.
11. The respondent would contend that a sum of Rs. 10,000 was debited in the account of Thiru K.L. Vasudeva Rao and he had also disowned his signature in Ex. M. 15, the alleged withdrawal slip and on the other hand, the handwriting expert also said that Q1 writing in Ex. M. 15 has tallied with the admitted writings of the petitioner and, therefore, the petitioner only had utilised the alleged withdrawal slip made in his own handwriting and withdrawn the said amount and, therefore, he is guilty of committing misconduct and, therefore, accordingly the Enquiry Officer found him guilty that the charges framed against him are proved and in view of such a finding, the disciplinary authority order of dismissal has to be upheld by this court.
12. The allegation against the petitioner is that he used Ex. M. 15 withdrawal slip dated 1.6.1992 and withdrawn a sum of Rs. 10,000 from S.B. A/c No. 7656 of K.L. Vasudeva Rao. In the said cheque the words Rs. 10,000 only was marked as Q1 and the signature of K.L. Vasudeva Rao in the front and back was marked as Q2 and Q3 by the handwriting Expert. The Handwriting Expert has taken the admitted signatures S1 and S2 in Ex. M.

4 and S3 to S8 and S8a in Ex. M. 23 and the signatures and writings of the petitioner which was marked as S9 to S19 by the Handwriting Expert and the same was marked as Ex. M. 21 and M. 22 are compared with the disputed signatures and writings of Q1, Q2 and Q3. After comparison the Handwriting Expert gave report that:

"The person who wrote the red enclosed signatures stamped and marked S1 to S8 and S8a did not write the red enclosed signatures similarly stamped and marked Q2 and Q3.

The person who wrote the red enclosed writings and signatures stamped and marked S9 to S19 also wrote the red enclosed writing similarly stamped and marked Q1."

The Handwriting Expert also deposed the above fact in the domestic enquiry proceedings also. On going through the evidence of Handwriting Expert in the domestic enquiry I have given meticulous consideration to the said evidence. From the said evidence it is clear that the signatures Q2 and Q3 in the withdrawal slip is not that of the account holder. As regards Q1 the handwriting Expert has given a categorical opinion it is the handwriting of the present petitioner. Considering the fact that the present petitioner was the cashier on the relevant day having disbursed the amount. Accordingly the pay slip nothing has been brought on record to establish how the petitioner's handwriting is found in Q1 writing. The petitioner himself in Ex. M 21 letter has admitted that he was functioning as a cashier on the relevant day of disbursing the amount and he was aware of the transaction on 1.6.1992 and however, he would confirm that he made payment of Rs. 10,000 for token No. 83 relating to S.B. A/c. No. 7656 withdrawal slip. These materials on record also establish the charges levelled against the petitioner. Nothing has been elicited from the Handwriting Expert to discredit the testimony.

13. From the above analysis, this court feels that the charges against the petitioner have been proved by the respondent Bank in the duly constituted disciplinary proceedings. The findings of the Enquiry Officer is also fair and reasonable and does not appear to be perverse. This court do not find any reason to arrive at the different conclusion, than the one arrived at by the Enquiry Officer based on the evidence available on record. Hence, I am of the considered view that the

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findings of the Enquiry Officer are fair and reasonable based on proper and valid domestic enquiry.

14. Regarding punishment, this court feels that the charges against the delinquent are very serious, based on the foregoing of amount has been withdrawn from the account holder of the bank. The management cannot continue with the service of such an employee. Hence, this court feels that the punishment is not disproportionate to the gravity of the misconduct which has been established. Under the said circumstances I do not feel to interfere with the punishment awarded to the petitioner. For the foregoing reasons, I am of the considered view that the petitioner is not entitled to any relief as prayed for in the industrial dispute and the points are answered accordingly.

15. In the result, award is passed dismissing the Industrial Dispute No costs.

Dictated to the Steno-typist, transcribed by her, corrected and pronounced by me in the open court, this the 13th day of August, 2012.

THIRU K. JAYABALAN, Presiding Officer

List of witnesses examined

For the workman : None

For the management: None

List of exhibits marked

For the workman : Nil

For the management :

- Ex. M 1/17.3.93 - Copy of charge memo issued to the petitioner.
- Ex. M 2/3.4.93 - Copy of letter of the petitioner to the respondent.
- Ex. M 3/6.4.93 - Copy of explanation of the petitioner.
- Ex. M 4/ ... - Copy of enquiry proceedings.
- Ex. M 5/28.6.93 - Copy of written submissions of the respondent before the Enquiry Officer.
- Ex. M 6/12.7.93 - Copy of written submissions of the petitioner before the Enquiry Officer.
- Ex. M 7/20.7.93 - Copy of findings of the Enquiry Officer.
- Ex. M 8/7.8.93 - Copy of explanation of the petitioner.
- Ex. M 9/4.9.93 - Copy of dismissal order issued to the petitioner.
- Ex. M 10/29.9.93 - Copy of appeal of the petitioner.
- Ex. M 11/5.5.94 - Copy of proceedings of the Deputy General Manager.
- Ex. M 12/ ... - Copy of complaint of the Manager, Virudhachalam Branch.
- Ex. M 13/2.11.92 - Copy of letter of K.L. Vasudeva Rao to the Branch Manager, Virudhachalam Branch.
- Ex. M 14/ ... - Copy of specimen signature card of K.L. Vasudeva Rao.
- Ex. M 15/1.6.92 - Copy of S.B. withdrawal order form.
- Ex. M 16/ ... - Copy of ledger sheet of S.B. A/c No. 7656 of K.L. Vasudeva Rao from 8.1.88 to 17.10.92.
- Ex. M 17/ ... - Copy of reconstructed subsidiary sheet in respect of Ledger No. 12 for the period 21.5.92 to 1.6.92.
- Ex. M 18/1.6.92 - Copy of withdrawal slip for Rs. 1,000 of S.B. A/c No. 6470.
- Ex. M 19/20.11.92 - Copy of R& L Section letter to the Forensic Sciences Department.
- Ex. M 20/5.1.93 - Copy of Forensic Sciences Department report with enclosures.
- Ex. M 21/4.11.92 - Copy of statement of M. Gunasekaran.
- Ex. M 22/9.11.92 - Copy of investigation report.
- Ex. M 23/1.2.93 - Copy of investigation report.

नई दिल्ली, 29 अक्टूबर, 2012

का.आ.3472.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतत्र के संबंद्ह नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, कोल्हापुर के पंचाट (संदर्भ संख्या 24/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल-39025/1/2010-आईआर(बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 29th October, 2012

S.O. 3472.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2004) of the Labour Court, Kolhapur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 25-10-2012.

[No. L-39025/1/2010-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE SECOND LABOUR COURT AT KOLHAPUR CORAM : SHRI M.S. KULKARNI, JUDGE.

Reference (IDA) No. 24/2004

Between :

The Zonal Manager,
Bank of India,

Pune Bangalore Highway,
Near Kavala Naka,
Kolhapur
And
Shri D.B. Vitekar,
Ranjanji, Tal. Kavathe Mahankal,
Dist. Sangli-416 411. Second Party.
Appearances :
Shri D.S. Joshi, Advocate for First Party.
Shri K.D. Shinde, Advocate for Second Party.

AWARD

(Dated : 21-9-2012)

The facts giving rise to this reference through Central Government can be narrated in short as;

2. Second party Shri D.B. Vitekar was in the employment of Bank of India the first party as staff Agriculture Assistant. His initial posting was at Murgud, Tal. Kagal where from he was transferred to Tal. Kavathe Mahankal Branch, then at Umadi, Tal. Jat branch and his last posting was at Ranjanji, Tal. Kavathe Mahankal. When he was attached to Ranjanji branch he was served with charge sheet dated 28.2.2001 alleging misconducts under clause 19-5(j) - doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve bank in serious loss and 19-5(k) - giving or taking bribe or illegal gratification from a customer or an employee of the bank of first bipartite settlement dated 19.10.1966. Those misconducts were classified by three separate charges. Under first charge, it was alleged that second party had taken the bribe or illegal gratification from 16 different customers on different occasions. Under second charge it was alleged that second party had taken Rs. 500 from Bank's customers Shri KATE of them Rs. 100 was misappropriated, while under third charge it was alleged that second party had taken Rs. 10000 from Shri Vadir (Bank customer) of which Rs. 4000 were only returned back. Second party did not give reply to the charge sheet. In the charge sheet itself, who would be enquiry officer was informed to the second party and accordingly before the said enquiry officer proceeding was held during 24.4.2001 to 17.9.2001. Total 17 sittings of the enquiry were held. Thereafter, by report dated 8.2.2002, enquiry officer submitted his findings to the first party which were against second party. On the basis of those findings, second party was issued show cause notice dated 2.3.2002 asking him why he shall not to

be dismissed from the service. The said show cause notice was issued by Chief Manager for Kolhapur Zone and disciplinary authority of first party bank. In pursuance of that show cause notice second party was again given opportunity of hearing before Disciplinary Authority. At relevant time also, second party raised several exceptions in concern of enquiry. Disciplinary Authority giving answer to each and every objection raised by second party in concern of enquiry proceeding held that the charges levelled against the second party were proved and passed order on 30.3.2002 of dismissal without notice against the second party. Second party then approached to the Appellate Authority of the first party bank. He was again given hearing. Appellate Authority again re-appreciated whole evidence came on record in enquiry proceeding and found that there was no wrong while conducting enquiry against the second party at the hands of enquiry officer, further the findings recorded by him are just and proper. Accordingly, appeal of the second party came to be rejected. Thereafter, second party approached Central Government where from by an order dated 1.6.2004 matter came to this Court for adjudication.

3. So far as aspects of mechanism of enquiry and the findings of enquiry officer therein are concerned, second party in his statement of claim alleges that date, day, time and places of alleged misconducts were not mentioned in the charge sheet. So, it was vague. Most important thing was that even when there was no complaint in writing from any customer against second party. Enquiry was initiated against him by mentioning the name of enquiry officer in the charge sheet itself. So, from the inception enquiry proceeding was going in utter disregard of principles of natural justice. During enquiry, statements of so called Complainants obtained by the bank officers behind back of the second party were produced in the enquiry. The dates on such letters, statements, complaints are old and those documents were fabricated and bogus. Both parties had led evidence by examining number of witnesses and the result was that there was no outcome from the enquiry against second party despite of that enquiry officer concluded that second party committed misconducts as alleged. So, the findings of enquiry officer against second party are illegal, improper and bad in law. In fact, the enquiry proceeding was nothing but an empty formality wherein enquiry officer was with the pre-determined state of mind to

hold the second party guilty. So, his findings are based on illogical inferences. The assessment of evidence is not at all judicious for no reasons, the evidence of second party is not believed and that of management is believed. Sometimes, the burden of disproving the charge was put unnecessarily on second party. So, enquiry held against second party was against the principles of natural justice and findings thus arrived at by enquiry officer are perverse. Second party workman in concern of acceptance of these findings by the competent authority of first party bank and infliction of punishment of dismissal contends that disciplinary authority has mechanically agreed with the findings of enquiry officer. He did not apply his mind to the enquiry report.

4. So far as aspect of punishment, second party workman alleges that before infliction of punishment, past unblemished record of second party workman was not considered. Even second party workman's reply to the final show cause notice was not considered, so the punishment of dismissal is illegal, unjustified. Accordingly, it is prayed that punishment of dismissal be set aside and direct first party bank to reinstate second party workman to his original post with continuity of service and full back wages.

5. Per contra, first party at the outset contends that all allegations of second party against the enquiry are illegal and baseless. It specifically contends that second party during the course of enquiry never raised the issue of so called vagueness in the charge sheet. The enquiry was conducted as per the principles of natural justice. An independent enquiry officer was appointed. During enquiry second party appeared and appointed defence representative one Mr. A.B. Bilgi the union official. The full and proper opportunity was afforded to the second party to defend himself. All the documents whereupon first party was relied upon were supplied to the second party. Further the management witnesses were offered for cross examination at the hands of second party. Second party was also given opportunity to lead defence evidence. Thereafter on the basis of evidence came before him the enquiry officer gave report on 8.2.2002 holding therein that misconducts alleged against the second party are proved. So, it cannot be said that enquiry was conducted against the principles of natural justice and the findings of enquiry officer are perverse. Considering the grave

misconduct of taking bribe or illegal gratification from the customers of the bank punishment of dismissal is awarded. It is inflicted after due consideration to the every aspect and disciplinary authority has acted judicially. This punishment is not illegal or unjust, hence, this reference be answered in negative.

6. In the background of above contention and the terms of reference issues are framed at Exh. O-13. First two issue of them are decided by this Court by way of Part-I Award on 21.11.2011. Both these issues are answered in favour of first party bank. Remaining issues are for my consideration. I give my findings against them with reasons in brief as below :

Issues	Findings
(3) Whether termination of second party is legal ?	In the affirmative.
(4) Whether second party is entitled for reinstatement with continuity of service and full back wages ?	In the negative.
(5) What award ?	Reference is answered in negative.

REASONS

7. **Evidence:**— No evidence has been led by both parties in concern of remaining issues.

8. **Arguments:**—I heard learned counsel of both parties. Senior learned counsel Shri K. D. Shinde on behalf of second party giving much stress on the first misconduct, tried to put before Court that how this misconduct is contradictory in contents. It is his submission that negligence is a totally different act where mental element does not have any role. While any act to cause prejudice to any party requires mental element mens rea. So, this first misconduct which is levelled against second party workman is illegal. In concern of this submission, learned counsel relied upon judgement of Hon. Bombay High Court in the case; Babanrao Budhajirao Navekar v. Adinath Sahakari Bank Ltd., [1995 (2) Mh. L.J.156]. Learned counsel would further submit that there was no evidence before enquiry officer to arrive at findings that there was acceptance of bribe or illegal gratification by second party workman, the transactions which are held proved were mere hand loan transactions and second party workman examining witnesses proved that in number of transactions he had repaid the said hand loan amount. This fact was not considered by the

competent authority as well as appellate authority. But this Court can consider this fact u/s. 11-A of the Industrial Disputes Act, 1947. To explain this fact he submitted that this Court has vide power under this section, to set aside punishment of dismissal and award lesser proper punishment. In concern of this submission learned advocate relied upon judgement of Hon. Gujarat High Court in the case A.M. Parmar v. Gujarat Electricity Board, Baroda (1982 Lab. I.C. 1031). Accordingly, learned counsel at last submitted that as the second party has been the only earning source for his family and because of infliction of punishment of dismissal upon him there is economical death of not only of him in individual, but of his whole family, the punishment of dismissal be commuted to any other lesser punishment.

9. Per contra, senior learned counsel Shri Joshi relying on two judgments; Kulwantrai Goyal v. Disciplinary Authority, Punjab & Sindh Bank, Mumbai (2010 I CLR 630 Bombay High Court) & Bilarvi v. Delhi Transport Corporation (2008 III CLR 448 Delhi High Court) submitted that the charge of taking bribe or illegal gratification is proved against second party. In such situation, considering the law laid down in catena of judgments more particularly these two judgments it is not proper for this Court to interfere with the discretion which is judicially used by the competent authority. Hence, this reference be answered in the negative.
10. ISSUES No. 3,4 & 5:— By giving findings pertaining to the first two issues which are in regard to the mechanism of enquiry and findings therein, this Court has held that enquiry conducted against the second party was in consonance of principles of natural justice and findings of enquiry officer are just and proper. Despite of that unfruitful reattempt was made to imbibe on the mind of this Court that second party has not committed any misconduct as alleged. By keeping reliance on the judgment of the Hon. Bombay High Court in the case of Babanrao Budhajirao Navekar v. Adinath Sahakari Bank Ltd. & Ors. [1995 (2) Mh.L.J. 154] it is submitted that the first misconduct alleged against the second party is unlawful. In the case of Babanrao Navekar (vide supra) the delinquent employee was charged with 3 charges: 1) gross negligence in work or negligence likely to involve the bank in serious loss; 2) dishonesty in connecting with the property or affairs of the bank and 3) commission of any act subversive of discipline or good behaviour on the premises of the bank. These

three charges were leveled against the act of said delinquent employee to make over payment of Rs. 10000 on 2.6.1982. In such set of facts, the Hon. Bombay High Court has held that the charge of gross negligence in work and charge of dishonesty do not run together as the second charge showing dishonesty involves guilty mind. While there is no necessity of mental ingredients in the first charge about negligence. In this case first charge against second party workman is under para 95J of Bipartite settlement dated 19.10.1966. It pertains to doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve bank in serious loss. Each act in this misconduct is separated by putting conjecture 'or'. The first act postulate the mental ingredient while the second act postulate the negligence in work. No doubt, in the enquiry report there is no mentioning which of these three acts involved in the said misconduct is proved, but from the report it can be gathered that the only first act i.e. doing any act prejudicial to the interest of the bank is proved. So, it cannot be said that this misconduct does not attract against the acts which are proved against second party.

11. While in an attempt to imbibe on mind once again that the misconducts are not proved it was also tried to say that because of the alleged misconducts even if for sake of argument held them proved there was no loss of single penny to the exchequer of bank and hence, court has to take lenient view and to award lesser punishment to the second party. It is submitted that for that purpose this Court is empowered u/s. 11A of the I.D. Act. In concern of this submission reliance has been placed on the judgment of Hon. Gujarat High Court in the case A.M. Parmar (supra). No doubt, the said judgment is based on the power of Industrial or Labour Court u/s. 11A. But the question before Hon. Gujarat High Court in that case was totally different. In that case, the delinquent employee who was working as Helper was charged for absenteeism and theft of scrap material. Before Labour Court it was submitted that the said Court could take recourse of Sec. 11A to award lesser punishment. But the concerned Labour Court holding that the Sec. 11A was only applicable when the delinquent employee would admit the guilt before the Court denied to show leniency. When the said matter went before Hon. Gujarat High Court the specific question before it was whether Sec. 11A of the I.D. Act has application only when the guilt is admitted by the delinquent employee or in other situation also while answering said question, it is held by Hon. Gujarat High Court that in other situation also the said

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section can be taken help of and accordingly matter was remanded back to the Labour Court for proper consideration. This judgement will not help here to the second party.

12. It is important to note here that enquiry officer giving answer to each and every charge held that misconducts leveled against the second party are proved. Under first charge second party was alleged that he had taken bribe from 16 customers. Enquiry officer held that the 8 incidents of them are proved. Under second charge second party was leveled with allegation that he had taken Rs. 500 from one Mr. Kate, the customer of first party bank to deposit in his loan account out of that he deposited only Rs. 400 and misappropriated amount of Rs. 100. While under third charge second party was alleged that he had taken Rs. 10000 from one Mr. Pramod Vadir, the customer of the bank out of which only Rs. 4000 were returned back. These two charges are held to have been proved against the second party. It is important to note that all the incidents leveled against the second party were in concern of the customers of the bank and second party had to carry out pre sanction or post sanction verification being the agricultural assistant of those customers.
13. Disciplinary authority while accepting the report of enquiry officer had again given hearing to the second party and his representative. Then reappreciating whole evidence present on record said authority gave its own findings against each and every incident leveled against second party under three different charges. By giving separate findings said authority has held that report of enquiry officer is correct and the misconducts of causing prejudice to the interest of the bank and taking bribe or illegal gratification from the customers are proved against the second party. Accordingly second party came to be inflicted with punishment of dismissal. Against that order second party approached Appellate Authority. Appellate Authority again giving personal hearing to the second party and his representative recorded its own findings against each and every objection raised by second party through the appeal and confirmed the said punishment.
14. It is now well established by catena of judgements that Court shall not interfere with decision taken by disciplinary authority. In the judgment Union Bank of India Vs. Vishwa Mohan, (1998) 1 L.L.J.

1217) Hon. Apex Court has held that in the case of misappropriation, if there is misappropriation of even small amount the punishment inflicted against employee by disciplinary authority cannot be interfered with. In the two judgments *Kulwantrai Goyal v. Disciplinary Authority, Punjab & Sindh Bank, Mumbai* (cited *supra*) and *Bilori v. Delhi Transport Corporation* (cited *supra*) where upon first party bank has relied upon, same ratio is reiterated. Here in this case by leading evidence second party has not brought on record any of mitigating circumstances to take lenient view u/s. 11A of the I.D. Act against him. So, it cannot be said that the dismissal punishment awarded against the second party is illegal. Because of that he is not entitled for reliefs as asked for. So, first issue is answered in the affirmative while remaining two issues are answered in the negative. Following is the order;

ORDER

The reference is answered in the negative.

Inform to the appropriate Government

Place: Kolhapur M. S. KULKARNI, Presiding Officer
Date:- 21.9.2012

नई दिल्ली, 29 अक्टूबर, 2012

का.आ. 3473.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिप्टी जरनल मैनेजर, हिन्दुस्तान केबल्स लि., नैनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 33/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-42011/5।/2012-आई.आर.(डी.यु.)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 29th October, 2012

S.O. 3473.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. Case no. 33/2012) of the Central Government Industrial-Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of the Deputy General Manager, Hindustan Cables limited, Naini and their workman, which was received by the Central Government on 26.10.2012.

[No. L-42011/51/2012-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

**BEFORE SRI RAM PARKASH, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, KANPUR.**

Industrial Dispute No. 33 of 2012

Between

B.N. Singh President,
Hindustan cables Shramik Sangh,
Office Hindustan Cables Limited,
PO and Tehsil Naini,
Allahabad.

And

The Deputy General Manager,
(W/R/P&A)
Hindustan Cables Limited Naini Unit
Allahabad.

AWARD

1. Central Government, MoI, New Delhi *vide* notification No. L-42011/51/2012 IRDU dated 08.05.12 has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of Hindustan Cables Limited Naini Allahabad in discriminating against the workman engaged in Naini Unit of it is not providing certain facilities and amenities viz-workmen of Hindustan Cables Limited placed in different unit employed in similar nature of work in justified? If not to what relief the workmen are entitled for?

3. In the instant case after issuance of notice to the parties concerned both the parties appeared before the tribunal on 06-09-12 and the representative of the union submitted before the tribunal that he does not want to press the reference pending before this tribunal. Representative for the opposite party too has not raised any objection on the submissions of the representative for the union.

4. Therefore, considering the request of the union representative and also considering the fact that there is neither any pleadings of the parties nor any evidence, the reference is bound to be decided against the union and in favour of the management.

5. Reference is answered accordingly against the union and in favour of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2012

का.आ. 3474.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाइरेक्टर जरनल, आरक्टोजिकल सर्वे ऑफ इंडिया, आगरा) के प्रबंधतंत्र के संबद्ध

नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्राम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 69/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-42011/38/2006-आई आर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 29th October, 2012

S.O. 3474.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. Case no. 69/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of the Director General, Archaeological Survey of India, Agra and their workman, which was received by the Central Government on 26-10-2012.

[No. L-42011/38/2006-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

**BEFORE SRI RAM PARKASH, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, KANPUR.**

Industrial Dispute No. 69 of 2006

Between—

Ashok Kumar Singh,
Vice President,
Rashtriya Mazdoor Congress Intuc,
80, Lauris Complex,
Namneir Crossing,
Agra.

And

The Director General,
Archaeological Survey of India,
District Agra.

AWARD

1. Central Government, MoI, New Delhi *vide* notification No. L-42011/38/2006 IRDU dated 15-09-06 has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management Archaeological Survey of India, Agra, in terminating the services of Sri Tabassum son of Sri Baboo Khan and 11 others with effect from 01-02-05 is legal and justified? If not to what relief the concerned workmen are entitled to?

3. It is unnecessary to give full facts of the case because on 19-09-2012, when the case was taken up for hearing, representative for the Union moved an application before the tribunal requesting therein that they are not interested to prosecute further the present case and their case be dismissed as withdrawn. Upon the said application the opportunities to adduce evidence by both the sides were closed.

4. Hence in view of above and considering the request of the union, there is no option left with the tribunal to decide the reference against the Union as withdrawn.

5. Accordingly the claim of the union is dismissed as withdrawn and the reference is answered against the union and in favour of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2012

का.आ.3475.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, नई दिल्ली के पंचाट (संदर्भ संख्या 180/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/218/2001-आई आर(सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 29th October, 2012

S.O. 3475.—In pursuance of Section 17 of the Industrial Disputes, Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.180/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 29-10-2012.

[No. L-22012/218/2001-IR (CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1,
KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 180/2011

The Joint Secretary,
Food Corporation of India Workers Union,
8585, Arakasha Road, Pahar Ganj,
New Delhi-110055.

.....Claimants Union

Versus

The Joint Manager—IR-Labour,
Food Corporation of India,
16-20 Barakhambha Lane,
New Delhi.Corporation.

AWARD

Memorandum of Understanding was arrived at between Food Corporation of India (in short the Corporation) and Food Corporation of India Workers Union (in short the union) on 13-06-1994 wherein issues relating to uniform, working hours for departmental labours, piece rate system (B category) workers, direct payment system workers and mate/workers management mate committee system workers was addressed to, besides other issues relating to revision of piece rates and minimum guaranteed wages and extension of certain fringe benefits as well as absorption of 323 retrenched workers. On 16-06-1994, a circular (hereinafter referred to as the old circular) was issued by the Corporation pursuant to above memorandum of understanding arrived to between the parties. In the said circular, it was emphasized that workers of the categories, referred above, shall put in 6 1/2 effective working hours daily with 30 minutes lunch break at par with depot staff in the respective depots. In case workers are engaged for overtime work in exigencies, they shall be entitled to overtime payment at 1.25 times of hourly payment rate for extra duty hours put in beyond normal duty hours upto statutory hours of work and rate for overtime allowance beyond statutory hours work as per stipulations in respective Shops and Establishments Act of respective States. Method of calculation of hourly payment rate of labour gangs for overtime was also detailed therein. On 27-09-1999, another circular (hereinafter referred to as the new circular) was issued by the Corporation wherein a different method for calculation of hourly payment rate of labour gang was described, which resulted in reduction of overtime allowance of the workers of the categories, referred above. The union raised a demand for calculation of hourly payment rate of labour gangs in consonance with the old circular, which demand was not conceded to. Resultantly, the union raised a dispute before the Conciliation Officer. Since the Corporation contested the claim put forth by the union, conciliation proceedings ended into failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government declined to make reference of the dispute for adjudication, vide its order dated 11-07-2003. However, the matter was reconsidered by the appropriate Government and vide order No. L-22012/218/2001-IR (CM II) New Delhi dated 09-12-2004 it was referred to Central Government Industrial Tribunal No. 11, New Delhi, for adjudication, with following terms :

"Whether the overtime wages calculation to the DPS Workers working in depots, introduced by the FCI management *vide* circular No. IR (L)/14(31)/98 dated 29/30-09-1990 is less beneficial than the existing method? If so, to what benefits DPS workers are entitled to?"

2. On 03-05-2005, corrigendum was issued by the appropriate Government wherein it was mentioned that the date in reference order may be read as 27-09-1999 instead of 29/30-09-1999.

3. Claim statement was filed pleading therein that the union is a registered trade union under Trade Union Act, 1926. It raised certain demands with the Corporation and as a result of mutual discussion on several occasions, Memorandum of Understanding was arrived at between the parties on 13-06-1994. In the Memorandum of Understanding it was agreed that working hours of piece rate system (B category) workers as well as workers of Chakradharpur Depot, direct payment system workers and workers of mate/WMC system working at 52 depots shall also be at par with depot staff working in respective depots. In case they are engaged overtime, they shall be entitled to overtime payment at 1.25 times on hourly payment rate for extra duty hours put in beyond normal duty hours upto statutory hours of work and overtime rate beyond statutory hours of work at the rate prescribed in Shops and Establishments Acts of respective States. Hourly payment rate of labour gangs was to be calculated by dividing gang's total earning of the entire day, including work done during and after normal duty hours by total number of hours put in by the gang for the day.

4. In pursuance of the said memorandum of understanding, the Corporation issued old circular dated 13-06-1994 for fixation of working hours for the workers of categories referred above. Payment of overtime was made to the workers in accordance with the old circular. Corporation, without any consultation and/or agreement with the union, revised payment of overtime and issued a new circular dated 27-09-1999. Earnings of workers of the categories referred above were adversely effected.

5. The union projects that the new circular was issued in violation of the provisions of Section 9A of the Industrial Disputes Act, 1947 (in short the Act). It changed service conditions applicable to workers of the aforesaid categories. Payment of overtime allowance was made by the Corporation under old circular for about five years and as such, it became an implied term of employment. Corporation unilaterally changed terms of service to disadvantage of the workers. Reduction of customary payment of overtime allowance led to dissatisfaction and resentment amongst

the workers. The union claimed that calculation of overtime wages in pursuance of new circular may be declared less beneficial to the workers. It may further be announced that overtime allowance calculation in pursuance of new circular is unjust, unfair and arbitrary, pleads the union.

6. Claim was demurred by the Corporation claiming that the dispute was raised by the union without raising any demand in that regard. The union filed the claim on wrong interpretation of provisions of the Act as well as contents of old and new circular. It is not disputed that Memorandum of Understanding dated 13-06-1994 was arrived at. However it is claimed that it was not registered in accordance with the provisions of the Act, hence cannot be made subject matter of an industrial dispute. Issuance of old circular was not disputed. Corporation projects that as per contents of the old circular, overtime payment at 1.25 times of hourly payment rate was to be made for extra duty hours up to statutory hours of work and at the rate prescribed in Shops and Establishment Acts of different States for extra duty hours beyond statutory hours. Their normal duty hours are upto 5 p.m. and workers are eligible for overtime at 1.25 times hourly payment rate 1.5 hours and beyond that at double rate of hourly payment rate. The Corporation presents that in order to motivate workers to complete work at the earliest possible so as to release railway wagon early, it was specified that for the purpose of calculating hourly payment rate for payment of overtime, actual earning of handling gangs may be divided by total number of actual work put in by the gangs for that day. Few examples of such calculation were also given alongwith the old circular. The said circular was accepted by all in respect of DPS labour.

7. In 1998, the union objected to examples given in the old circular and protested that overtime payment should be made at 2.25 times instead of 1.25 times for the work done beyond normal working hours. At that time, old circular was examined and error of calculation of hourly payment rate came to light. Therefore, the Corporation clarified the situation by issuance of new circular. Overtime allowance rate was revised *vide* circular No. 2/2004. Issue relating to revision of overtime allowance rate pends adjudication before the National Industrial Tribunal, Kolkata. The Corporation claims that its action in issuing the new circular has not adversely affected terms and conditions of employment of the workers. New circular clarifies the position mentioned in the old circular. There has been no change in terms and conditions of service of the workers. In old circular, it was contended that out of total earning of Rs. 477.27, proportionate amount of Rs. 269.75 earned during normal shift hours is to be allowed as normal wage and remaining amount is to be accounted for the purpose of calculation of overtime wage at 1.25 times or at 2 times, as the case may be. In old circular, it was

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further mentioned that in addition to the overtime wage, workers will be eligible for wages for proportionate work done in normal working hours subject to minimum guaranteed daily wage. Same provisions has been retained in the new circular. New circular is not in violation of provisions of Section 9A of the Act. There has been no change in service conditions of the workers. It has been disputed that payment of overtime had become contractual payment. Memorandum of Understanding had not become an accepted customary method of payment. It has been denied that the new circular resulted in dissatisfaction and strong resentment amongst the workers. Corporation claims that the case projected by the union may be dismissed, being devoid of merits.

8. Shri D.C. Nath, entered the witness box to testify facts on behalf of the union. Shri Anil Kapoor detailed events on behalf of the Corporation. No other witness was examined by either of the parties.

9. *Vide* order No. Z-22019/6/2007/IR(CII) New Delhi, dated 13-03-2011, the case was transferred to this Tribunal for adjudication by the appropriate Government.

10. Arguments were heard at the bar. Shri Inderjit Singh, authorized representative, presented facts on behalf of the union. Shri Om Prakash, authorised representative, advanced arguments on behalf of the Corporation. Written submissions were also filed by the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

11. First and foremost contention advanced by the Corporation is that the dispute under reference has not been espoused by the union. Shri Om Prakash had invited my attention towards facts unfolded by Shri D.C. Nath, wherein he concedes that no resolution was passed by the union for raising a dispute. However, Shri Nath claims that as per constitution of the union, he was competent to raise dispute and testify facts before this Tribunal. Shri Inderjit Singh dispels submissions advanced by Shri Om Prakash claiming that the dispute under reference relates to workmen as a class and is an industrial dispute.

12. Whether dispute raised by the union is an industrial dispute? For an answer to this proposition it is expedient to know the definition of term "industrial dispute", as contained in clause (k) of Section 2 of the Act, which is reproduced thus:

(k) "Industrial dispute" means any dispute or difference between, employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

13. The definition of "industrial dispute" referred above, can be divided into four parts, viz (1) factum of dispute, (2) parties to the dispute, viz., (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with—(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

14. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of Section 2 of the Act.

15. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workman as a class.

16. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and rules that the expression "any person" in clause (k) of Section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in

the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employer, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus :

"We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances.

17. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patwardhan (1957 (1) LLJ 27) the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand (1965 (1) LLJ 668) it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited (1970(1) LLJ 182). However in Western India Match Company (1970 (II) LLJ 256), the Apex Court referred the precedent in Drona Kuchi Tea Estate's case (1958 (1) LLJ 500) and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

18. The term, 'industrial dispute' conveys meaning that the dispute must be such as would affect a large group of workmen and employer, ranged on opposite sides.

Applicability of the Act to an individual dispute, as distinct from the dispute involving group of workmen, is excluded unless the workmen as a body or a considerable section of them, make a common cause with the individual workman. The scheme of the Act contemplates that the machinery provided therein should be set in motion to settle only such disputes as involving right of workmen as a class and that the dispute which touches individual rights of the workman, was not intended to be subject of adjudication. Even a single employee's dispute may develop into an industrial dispute, when it is taken up by the union or a number of workers to make concerted demand for redress. Law to this effect was laid in Raghunath Gopal Patwardhan (1957(1) LLJ 27), Newspapers, Ltd. (1957(2) LLJ 1), Bombay Union of Journalists (1961(2) LLJ 436), Dharma Pal Prem Chand (Saugandhi) (1965(1) LLJ 668) and Western India Match Company Ltd. 1970(2) LLJ 256).

19. As projected above, present dispute relates to calculation of overtime wages of DPS workers working with the Corporation in its various depots. It is crystal clear that the workmen as a class are interested in adjudication of the dispute. Hence, present dispute is an industrial dispute and no espousal is needed to raise it for adjudication. This dispute was raised by the union before the appropriate Government. It was well conceived by the appropriated Government that the dispute relates to workmen as a class. Consequently, it does not lie in the mouth of the Corporation to assert that the dispute is not competent, without a resolution being passed in that regard by the Union.

20. On 16-06-1994, old circular was issued by the Corporation to implement Memorandum of Undertaking dated 13-06-1994 entered into between the Corporation and the union. Contents of the old circular projects that the workers working in godowns listed in Annexure B of the agreement dated 12-04-1991 as well as at Chakradharpur Depot and DPS workers and workers engaged in 52 depots under mate/WMC system shall put in 6½ working hours daily with 30 minutes lunch break, at par with depot staff in respective depots. It has further been mentioned therein that in case workers are engaged for overtime work in exigencies, they shall be entitled to overtime payment at 1.25 times of the hourly payment rate for extra duty hours put in beyond normal duty hours upto statutory hours of work and rate for overtime allowance beyond statutory hours of work would be as per stipulations prescribed in Shops and Establishments Acts of respective States.

21. Out of contents of the old circular, it became crystal clear that normal working hours for workers of above referred categories were fixed at 6½ effective working hours, at par with depot staff working in respective depots. In case of their engagement beyond normal working hours, they were declared entitled to overtime payment at 1.25 times of hourly payment rate upto statutory hours of work

and at double rates for overtime beyond statutory hours of work. Old circular became effective from June 1994 and remained in force till the date when new circular was issued on 29.9.1999.

22. New circular was issued by the Corporation on 27.09.1999 wherein it has been mentioned that matter was reconsidered in headquarters and it is clarified that DPS workers working in various depots for food handling operation, if commanded to work beyond normal working hours in exigencies of work, shall be entitled to overtime wage equal to 1.25 times of hourly payment rate for extra hours beyond normal duty hours and upto statutory hours. For extra hours of work beyond statutory hours overtime wages shall be paid equal to 2 times. Therefore, it is apparent that in old circular as well as in new circular, Corporation has emphasized that normal working hours of workers, referred above, shall be $6\frac{1}{2}$ hours effective working hours. Two circulars project that after normal working hours, overtime allowance shall be paid at 1.25 times of hourly payment rate for extra duty hours put in beyond normal working hours upto statutory hours of work and at 2 times of normal hourly payment rate beyond statutory duty hours. There is no inconsistency in these two circulars as far as payment rates of overtime working hours are concerned.

23. However, the two circulars, as proved by Shri Kapoor as well as Shri Nath, contain incongruity relating to calculation of hourly rate of payment. The old circular, in its para 3, projects that hourly payment rate of labour gang(s) for overtime hours, would be calculated by dividing the gang's total earning for the entire day, including work done during and after normal duty hours, by total number of hours put in by the gang for the day. This position was changed by the Corporation in the new Circular, where in para 4, it has been detailed that total earnings for entire day, including work done during and after normal duty hours will be apportioned in ratio to number of hours of work done in normal shift hours and number of hours of work done beyond normal working hours. Proportionate actual earning so calculated for the work done in normal shift shall be payable, subject to minimum guaranteed wage of the labour(s). Thus, it is evident that in calculation of hourly payment rate, the new circular presents that proportionate actual earning shall be calculated for work done in normal shift hours and it shall be payable subject to minimum guaranteed wage of the labour and total work done during and after duty hours shall be apportioned in ratio to number of hours of work done in normal shift hours and number of hours of work done beyond normal working hours. This change in calculation of hourly rate payment pinches the members of the union.

24. Question for consideration comes as to whether this change in calculation of hourly payment rate amount to alteration or change in conditions of service applicable to the members of the union? For an answer it would be

expedient to construe the phrase "conditions of service". Expression "conditions of service" is an expression of wide import. Conditions of service means those condition which regulate holding of a post by a person right from his appointment till retirement. Judicial pronouncements include termination of service within the conditions of service of an employee. Any condition or stipulation, which is connected with the employment, terms of employment, conditions of labour, besides those mentioned in Fourth Schedule appended to the Act shall fall within the ambit of "conditions of service". Mode of calculations of "hourly payment rate" of a gang for any particular day would enable handling workers to calculate their overtime wages for overtime work performed on that day and would fall within the ambit of "conditions of service". Since mode of calculation of "hourly payment rate" was obtained by collective bargaining and implemented by the Corporation, one can not say that to acquire protection of section 9 A of Act, it has to remain in force for a considerable long period. Once a stipulation is enforced in favour of workmen, which stipulation relate to any conditions of service, enumerated in the Fourth Schedule appended to the Act, it is immaterial that the Memorandum of Understanding was not registered under the provisions of the Act or method of calculation of "hourly payment rate" for a particular day has not been accepted as customary method of payment.

25. There was no provision in repealed Trade Disputes Act 1929 or in the Act providing for notice of change in condition of service applicable to workmen. As a result of persistent demand sections 9A and 9B of the Act, besides Fourth Schedule were introduced in the statute book. Introduction of section 9A prevents unilateral action on the part of the employer in changing conditions of service, to the prejudice of the workmen. The real purpose of the above provision is "to offer an opportunity to the workmen to consider the effect of proposed change, if necessary, to present their point of view on the proposal" and as such consideration would further serve to stimulate a feeling of consent and joint interest of the management and workmen in industrial progress.

26. Fourth Schedule appended to the Act enumerates conditions of service, for change of which notice is to be given. Item No. 1 of the said schedule speaks in respect of change in wages, including period and mode of payment. Item No. 3 contemplates change in compensatory and other allowance, while in item no. 4 of the Schedule speaks of change in hours of work and rest intervals. Item No. 5 enumerates change in respect of leaves, holidays and wages. Item no. 6 of the Schedule encompasses within purview of change relating to starting, alteration and discontinuance of shift working, otherwise than in accordance with the standing orders. Item 8 takes care of withdrawal of any customary concession or privilege or change in usages. Therefore when an employer wants to alter or discontinue shift working of its employees, reduce wages including

period and mode of payment, change in hours of work and rest intervals, leaves and holidays and withdrawal of any customary concession or privileges or change of usages, he is required to follow the procedure provided in Section 9A of the Act. For application of provisions of Section 9A of the Act there should be change in the conditions of service, as enumerated in Fourth Schedule appended to the Act.

27. As referred above, the union projects dispute to the effect that overtime allowance, which was admissible to its members, was reduced on the strength of the new circular issued by the Corporation. The Corporation nowhere disputes that method of calculation of "hourly payment rate" of labour gang has been altered by issuing the new circular. In view of these facts, it is to be considered as to whether overtime allowance, admissible to the members of the union, form part of wages. For an answer, definition of 'wages' as indicated in Clause (rr) of Section 2 of the Act, is to be construed. Term 'wages' as defined in the aforesaid clause is extracted thus:

"wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes—

- (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;
- (iii) any travelling concession;
- 2*[iv) any commission payable on the promotion of sales or business or both;]

but does not include—

- (a) any bonus;
- (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
- (c) any gratuity payable on the termination of his service.

28. Remuneration is a more formal version of payment. It may be said to be a return for service rendered to by an employee. However, definition of the term 'wages' stipulate that the remuneration must be 'capable of being expressed in terms money' payable to a workman in respect of his

employment or for the work done in such employment. In Bennet & Colman Company (Pvt.) Ltd. [1969 (2) LLJ 554] car allowance and benefit of free telephone and newspaper given to the workmen were held not be covered by the word "remuneration" as used in first part of the definition, since they were not restricted to the employment or work of the workman, who was a special correspondent, and were not fixed after taking into consideration expenses which he would have ordinarily incurred in connection with his employment or work done in such employment. However, car allowance and benefit of telephone and newspaper were held to be falling within the meaning of the word 'allowance' used in sub-clause (i) of the inclusive part of the definition.

29. Allowances, which are admissible to workmen, are innumerable. One of such allowance is overtime allowance. Section 59 of the Factories Act 1948 describes that a worker who works overtime in a factory shall be entitled to twice his ordinary rate of wages in respect of overtime work. For the purpose of calculating such over time, expression, 'ordinary rate of wages' has been defined to mean basic wages plus such allowances, including the cash equivalent of the advantage accruing on account of concessional sale of workers of foodgrains and other articles as the worker is for the time being entitled to, but does not include a bonus. Section 33 of the Mines Act, 1952 also speaks in similar terms. The above provisions specifically includes dearness allowance in the definition of 'ordinary rate of wages'. For workers working in factories and mines, rates of overtime have been fixed by relevant statutes.

30. In Karam Chand Thapar & Bros. Ltd [1964(1) LLJ 429], the Apex Court laid down principles for fixing overtime allowance, which are detailed thus:

- (i) overtime allowance should have relation to total wage packet, viz. basic wage dearness allowance.
- (ii) it should be fixed on consideration of the financial capacity of the company, and
- (iii) it should also be fixed on consonance with the practice prevalent in other concerns in the neighbourhood.

31. In Calcutta Electric Supply Corporation Ltd. [1973 (2) LLJ 258], the Apex Court commented that the case required payment of overtime wages for all hours in excess of the prescribed working hours at special overtime rates. Thus, it is apparent that workers shall be entitled to overtime wages at a higher rate of wages than the ordinary rate of wages in case they are made to work beyond normal working hours in a day or week, as the case may be. It is crystal clear that the payment of overtime allowance to a workman, when he worked overtime in a factory, is his right. Thus, it is evident that overtime allowance falls within the definition of wages as indicated by clause (rr) of Section 2 of the Act.

32. At the cost of repletion, it is emphasized that the Corporation had changed "hourly payment rate" of labour gang(s). In old circular, "hourly payment rate" of labour gang(s) for overtime was to be calculated by dividing the gangs' total earning of the entire day, including work done during and after normal duty hours by total number of hours put in by the gang(s) for the day. This method of calculation takes into consideration entire working hours of the gang. Total earning of the gang for the day is to be divided by total number of hours of work put in by them. But new circular brings change in calculation of hourly payment rate. According to the new circular, total earnings for the entire day, including work done during and after normal duty hours will be apportioned in ratio to the number of hours work done in the normal shift hours and number of hours work done beyond normal working hours. Proportionate actual earning calculated for the work done in the normal shift hours was to be paid to the workmen subject to minimum guaranteed wage of labour(s). This change led to calculation of hourly payment rate to lower side than the method of calculation provided in old circular.

33. In old circular as well as new circular, payment rates for overtime work beyond normal hours upto statutory hours and beyond statutory hours are the same. However, by adopting a different method for calculation of "hourly payment rate" of labour gang(s), the Corporation has effected a real change in overtime allowance admissible to members of the union. This change has resulted into reduction of their overtime allowance, which is a part of their wages. Admittedly, no notice was given under Section 9A of the Act by the Corporation. Action of the Corporation is not in consonance with the provisions of the Act. Under these circumstances, it is crystal clear that the Corporation cannot put new circular into service, since it was issued in violation of Section 9A of the Act. The new circular, issued by the Corporation, is hereby, discarded. The Corporation shall be duty bound to calculate "hourly payment rate" in accordance with method provided in the old circular. Members of the union shall be entitled to calculation of their overtime allowance on the basis of "hourly payment rate" calculated in consonance with the old circular. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 9-10-2012

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2012

का.आ.3476.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचाट (संदर्भ संख्या 35/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2012 को प्राप्त हुआ था।

[सं. एल.-22012/389/1998-आई आर (सीएम-II)]

बी. एम. पट्टनायक, अनुभाग अधिकारी

New Delhi, the 29th October, 2012

S.O. 3476.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 35/1999 of the Cent.Govt.Indus.Tribunal-cum -Labour Court Asansol as shown in the Annexure in the industrial dispute between the management of Bahula Colliery of M/s. ECL, and their workmen, received by the Central Government on 29-10-2012

[No. I-22012/389/1998-IR (CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: Sri Jayanta Kumar Sen,

Presiding Officer

REFERENCE No. 35 OF 1999.

PARTIES: The management of Bahula Colliery of M/s.

ECL, Burdwan

Vs.

Their workman

REPRESENTATIVES:

For the Management : Sri P.K. Goswami, Advocate.

For the union : Sri Rakesh Kumar, Asst. Gen. (Workman) Secretary KMC, Asansol.

Industry : Coal : State : West Bengal

Dated-08-10-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/389/98-IR(CM-II) dated 25-05-1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the Management of Bahula Colliery, Kenda Area, M/s. ECL in terminating the services of Smt. Ludgi Mejhan, Conveyor Mazdoor, is legal and justified? If not, to what relief is the workman entitled?"

Having received the Order of Letter No. L-22012/389/98/IR (CM-II) dated 25-05-1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for

adjudication of the dispute, a reference case No. 35 of 1999 was registered on 07.06.1999 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

3. Both the parties made their appearance in the Court and filed their pleadings. They also relied on documentary evidence. Learned counsels for the parties have been heard at length.

4. The case of the workman of Smt. Ludgi Mejhain in brief is that she was appointed as Conveyer Mazdoor by the Management of Bahula Colliery, Kenda, Area, M/s. ECL, on the compassionate ground after the death of one Mangal Majhi (No. 4) (deceased) who said to be the husband of the workman (Smt. Ludgi Mejhain). The Management after full verification of the claim of Smt. Ludgi Mejhain appointed her as Conveyer Mazdoor. It is an admitted fact that she was working since 14.12.1990. It is further stated that one Lakshmi Mejhain filed one Title Suit No. 31. of 1991 in Durgapur Civil Court claiming herself as legal married wife of Late Mangal Majhi (No. 4) and that Title Suit No. 31 of 1991 was dismissed by the 1st Munsiff by a judgement and order dated 12.05.1992. Being aggrieved by that order and judgement, Lakshmi Mejhain filed Title Appeal No. 30 of 1992 and the same was decided by the Asstt. District Judge, Durgapur Court, on 30.09.93 (Ex-party) on the ground Smt. Ludgi Mejhain (respondent) did not turn up. Thereafter Ludgi Mejhain filed one Title Suit No. 52 of 1994 before the 1st Munsiff Court, Durgapur, claiming that judgement passed by the Asst. District Judge, Durgapur on 30.09.93 in Title Appeal No. 30 of 1992 is not binding on her as the same was passed Ex-party which the plaintiff Smt. Lakshmi Mejhain obtained by playing fraud. The Munsiff of 1st Court, Durgapur, by his judgement dated 27.11.95 in title suit No. 52 of 1994 has dismissed the suit on the ground of Res-judicata as well as beyond the jurisdiction of the Court. The claimant i.e. petitioner Smt. Ludgi Mejhain filed one Title Appeal No. 65 of 1995 against the judgement and decree passed by the Munsiff of 1st Court, Durgapur dated 27.11.95, and the Learned Asst. District Judge, Durgapur, by his judgement dated 27.09.1996 has set aside the judgement and order dated 27.11.1995 passed by the Munsiff of 1st Court, Durgapur, in Title Suit No. 52 of 1994 and remanded back case with observation for fresh trial. It is worth to mention that during pendency of the said Title Suit/Title appeal, the claimant Smt. Lakshmi Mejhain died and her daughter Km. Chabini Mejhain was substituted. It further appears from the documents and on the basis of the order of the Asstt. District Judge, Durgapur, dated 07.09.1996, the Title Suit No. 52 of 1994 was restored in the Court of 1st Munsiff, Durgapur.

5. It further appears from the documents filed on behalf of Ludgi Mejhain that on 5.03.1997 a joint compromised petition filed in between Smt. Ludgi Mejhain and Km. Chabini Mejhain (daughter of Smt. Lakshmi Mejhain) and the learned Munsiff by its order and decree dated 17.02.1997/26.02.1997 decreed the suit on the basis of compromised petition. On perusal of the compromised petition dated 5.03.1997, I find that Km. Chabini Mejhain has stated that Smt. Ludgi Mejhain (claimant) is the legal widow of Mangal Majhi (No. 4) and She (Smt. Ludgi Mejhain) is entitled to get all benefits after the death of Mangal Majhi (No. 4).

6. On perusal of the documents I find that ECL Management had appeared in the above mentioned Title suit and the Title Appeal and it is apparently clear that ECL authority had full knowledge about the pendency of the civil cases filed by Smt. Ludgi Mejhain but the E.C.L. authority abruptly dismissed Smt. Ludgi Mejhain on 02.05.96 on the basis of ex-parte order of Asst. District Judge, Durgapur in Title Appeal No. 30 of 1992 dated 30.09.1993, without hearing and waiting for the order of Civil Court in Title Suit No. 52 of 1994 which was subjudiced at that time. The learned lawyer of the Management has submitted that since the order of the Appellate Court passed in Title Appeal No. 30. 1992 dated 30.09.1993 is not being challenged so the Management has rightly dismissed the claimant (Smt. Ludgi Mejhain) with effect from 03.05.1996 vide Letter No. PERS/KND/74/301 dated 3.05.1996 without observing required formalities as admissible under provision of Standing Order and the termination order was passed. But on perusal of the documents filed on behalf of the claimant (Smt. Ludgi Mejhain) I find that dispute rose by Smt. Lakshmi Mejhain on the point of legal widow of Mangal Majhi No. 4. In my opinion the Management should wait for final decision of Title suit No. 52 of 1994 which was restored by the Munsiff on 1st Court, Durgapur, on the basis of order of Asst. District Judge, Durgapur. So, in my opinion dismissal order of Smt. Ludgi Mejhain (claimant) by the Management is not correct in accordance with the law. Moreover, I find that one Km. Chabini Mejhain (daughter of Late Lakshmi Mejhain) has specifically stated before the Court in the compromised petition that Smt. Ludgi Mejhain is actually the legally married wife of Late Mangal Majhi No. 4. So, I find that the dispute arose by Smt. Lakshmi Mejhain automatically comes to an end on the basis of the order and decree dated 17.02.1997/26.02.1997 passed in Title suit No. 52 of 1994 of the Munsiff 1st Court, Durgapur.

7. In the result it is hereby-

ORDERED

That the action of the Management of Bahula Colliery, Kenda Area, ECL, in terminating the services of Smt. Ludgi Mejhain with effect from 03.05.1996 is not legal and justified. She is entitled to be reinstated in service from the

date of her dismissal i.e. from 3.05.1996, along with back wages and consequential benefits due to her as if she is in service since then. In view of the lapse of good deal of time it would be proper if the monetary benefits due to flow down from the award be disbursed within three months of the notification pending grant of other relief.

Let an "Award" be and same is passed.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2012

का.आ.3477.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 49/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/141/2006-आईआर (सीएम-II)]

बी.एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 30th October, 2012

S.O. 3477.—In pursuance of Section 17 of the industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.49/07) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of Singrauli Area of NCL and their workmen, received by the Central Government on 30-10-2012.

[No. L-22012/141/2006-IR (CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR
NO. CGIT/LC/R49/07
Presiding Officer: SHRI MOHD. SHAKIR HASAN
The General Secretary,
M.P. Koyla Mazdoor Sabha,
N.M-27, Amlohri Project of NCL,
PO Amlohri, Sidhi (MP)

... Workman

Versus

The Chief General Manager(P),

Singrauli Area of NCL,

PO Singrauli, Sidhi (MP)

... Management

AWARD

Passed on this 18th day of October, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L—22012/141/2006-IR (CM-II) dated 14-6-2007 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of M/S. NCL in not giving promotion to Shri Firangi Lal, Head Peon to the post of Xerox/Gestener Operator and not making payment of difference of wages for the period he officiated as Gestener Operator is legal and justified? If not, to what relief the workman is entitled?"

2. The Union/workman did not appear in spite of proper notice. Lastly the reference proceeded expate against the Union/workman on 14-2-2012.

3. The management appeared and filed an application along with copy of settlement and the office order of the implementation of the settlement. It is stated that General Secretary, M.P. Koyla Mazdoor Sabha has raised the present dispute. The dispute was amicably settled between the parties in Form H. It is stated that this is full and final settlement on this issue. Subsequently he was also promoted to the post of Duplicator Operator/Xerox operator cum Daftary Gr. E w.e.f. 15-10-2009. Now there is no dispute.

4. The management has file the copy of the settlement dated 31-7-2007. The copy of the settlement shows that both the parties have entered into the settlement including the workman Shri Firangilal. It appears that there is no illegality in arriving at the settlement. The terms of settlement between the parties are reproduced below.

नियम एवं शर्तें

1. श्री फिरंगीलाल को दि 22.01.04 से नोशनल सीनियरिटी सहित हेड प्यून, दफ्तरी जूनियर डुस्लीकेटर आपरेटर/जिरोक्स आपरेटर कम प्यून टीएंड एस ग्रेड-एफ में (मूलवेतन में बिना किसी परिवर्तन के) पदनामित (Redesignation) किया जायेगा।

2. उपरोक्त पद पर परिवर्तन होने पर श्री फिरंगीलाल वर्तमान में टीएंड एस ग्रेड-ई के वेतनमान का लाभ SLU के रूप में प्राप्त कर रहे हैं उसे वे प्राप्त करते रहेंगे अर्थात् श्री फिरंगीलाल पद परिवर्तन हेड प्यून, दफ्तरी, जूनियर डुस्लीकेटर आपरेटर/जिरोक्स आपरेटर कम प्यून टीएंड एस ग्रेड-एफ के रूप में होगा किन्तु उनके वेतनमान में कोई परिवर्तन नहीं होगा।

3. श्री फिरंगीलाल इस पद परिवर्तन के फलस्वरूप किसी भी प्रकार के अतिरिक्त आर्थिक लाभ के हकदार नहीं होंगे और न ही वे इस संबंध में कोई दावा करेंगे।

4. श्री फिरंगीलाल की T&S Gr. E में विभागीय पदोन्नति कंपनी के नियमानुसार की जावेगी।

5. श्री फिरंगीलाल स्वयं या किसी श्रमिक संघ के माध्यम से इस विवाद को किसी न्यायालय में नहीं उठायेंगे तथा यह इस विवाद का अंतिम एवं पूर्ण समझौता होगा।

6. श्री फिरंगीलाल एवं उनके श्रमिक संघ के प्रतिनिधि इस प्रकरण को, जो श्रम मंत्रालय, भारत सरकार, नई दिल्ली से संदर्भित होकर सीजीआईटी, जबलपुर में न्याय निर्णय हेतु भेजा गया है, उसे इस समझौते की एक प्रति दाखिल कर प्रकरण No Dispute Award पारित करने के लिए प्रस्तुत करेंगे।

7. इस समझौते की एक प्रति सहायक श्रमायुक्त (केन्द्रीय), शहदोल को पंजीयन हेतु भेजी जायेगी एवं इसकी सूचना क्षेत्रीय श्रमायुक्त (केन्द्रीय), जबलपुर व श्रम मंत्रालय, भारत सरकार, को भी भेजी जायेगी।

This shows that now there is no dispute and the office order dated 15-10-2009 also shows that he was also promoted. The reference is therefore answered in terms of settlement.

5. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer
नई दिल्ली, 30 अक्टूबर, 2012

का.आ.3478.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मलारिया रिसर्च सेन्टर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 91/04) को प्रकाशित करती है जो केन्द्रीय सरकार को 30-10-2012 को प्राप्त हुआ था।

[सं. एल.-42012/153/2003-आई आर (सीएम-II)]

बी.एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 30th October, 2012

S.O. 3478.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 91/04] of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the industrial dispute between the management of Malaria Research Centre, and their workmen, received by the Central Government on 30.10.2012

[No. L-42012/153/2003-IR (CM-II)]

B.M. PATNAIK, Section Officer

4292 GI/12-22

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/91/04

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Narendra Dutt,
S/o Shri Hari Dutt,
T. No. 29,
LB Section, GCB,
Jabalpur (MP)

... Workman

Versus

The Office Incharge,
Malaria Research Centre,
Medical College Building,
Jabalpur (MP)

... Management

AWARD

Passed on this 16th day of October, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-42012/153/2003-IR(CM-II) dated 29-7-2004 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of the Malaria Research Centre, Jabalpur in terminating the services of Shri Narendra Dutt w.e.f. 10-7-1995 after rendering 5 years continuous service when the project was in progress is legal and justified? If not, to what relief the workman is entitled?"

2. The workman appeared in the case on 24-7-07 alongwith his counsel but did not file statement of claim inspite of several adjournment. Lastly the workman became absent and the reference proceeded *ex parte* against the workman on 17-5-2012.

3. The management also appeared in the case. He was directed to file Written Statement. The learned counsel for the management submitted that the workman has not raised any dispute before the Tribunal and has not filed Statement of claim. As such the management does not want to file any Written Statement. It is submitted that no dispute award be passed.

4. Considering the above aspect of the reference case, it is clear that the workman has not raised any dispute by filing statement of claim and documents as he was repeatedly directed to do so. This shows that now there is no dispute between the parties. The reference is accordingly answered.

5. In the result, no dispute award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2012

का.आ. 3479.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 81/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/10/2012 को प्राप्त हुआ था।

[सं. एल-22012/20/1997-आई आर (सीएम-II)]

बी.एम. पट्टनायक, अनुभाग अधिकारी

New Delhi, the 30th October, 2012

S.O. 3479.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 81/98] of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 30/10/2012.

[No. L-22012/20/1997-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/81/98

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

General Secretary,

R.K.K.M.S. (INTUC),

Post Chandametta,

Distt. Chhindwara (MP)

... Workman/Union

Versus

General Manager,

Western Coalfields Limited,

Kanhan Area, Post Dungaria,

Distt. Chhindwara (MP)

... Management

AWARD

Passed on this 19th day of October, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-22012/20/97-IR(CM-II) dated 24-4-98 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the Manager, Mohan Colliery of WCL, PO Junnardeo, Distt. Chhindwara (MP) in not promoting Shri Sadanand Rambhachan, S/o Sunderlal, Gajanand S/o Brij, Sukhchand S/o Bhangi and Mahulal S/o Nokhey, Mechanical fitter, Cat-IV

to Cat-V and VI as per the norms prescribed by the JBCC for promotion to Mechanical Fitter Cat. V and VI is justified? If not, what relief the workmen are entitled?"

2. The case of the Union/workmen in short is that the workmen were appointed and are working at Mohan Colliery of WCL of Kanhan Area. They were promoted to the post of Mechanical Fitter category IV. On the recommendations of the departmental promotion committee they had been further promoted to the post of Mechanical Fitter Category V under NCWA No. IV *vide* order dated 12-9-1994. It is stated that the management in order to victimize these workmen promoted Shri Shivram and Shri Sunderlal from Tindal Category IV to Mechanical Fitter Category V *vide* order dated 29-12-1989 which was against the Cadre Scheme. The management secretly entered into settlement on 1-3-1995 and promoted Lakshminichand and Jabbar after giving them notional promotion in Cat V from 26-12-1989 and in Cat VI from 20-5-94. The management raised dispute for adopting discrimination and unfair labour practice to Shri Sunderlal and Shri Shivram. They were accordingly promoted by way of settlement. These workmen are ignored by the management though they had been given promotion alongwith above named workers. It is submitted that the reference be answered in favour of the Union/workmen.

3. The management appeared and filed Written Statement. The case of the management, *inter alia*, is that the dispute is raised in the year 1998 *i.e.* after the lapse of considerable period of time. The promotion cannot be claimed as a matter of right. It is stated that the work of Tindal is related with Electrical and Mechanical Department. Therefore Shri Shivram and Sunderlal were well acquainted with the work of fitter. They were being paid officiating allowance of Mechanical Fitter Cat-V from 1987. They became eligible for their regularization. In case of Lakshminichand and Jabbar the management had rectified the anomaly by giving them notional seniority in Cat V and VI. Moreover promotion is being done subject to availability of post in the respective category. On these grounds, it is submitted that the workmen are not entitled to any relief.

4. During the course of proceeding, the management filed an application dated 10-8-2010 that the Union raised present dispute with respect to four workmen regarding their promotion from mechanical Fitter Cat IV to V and thereafter from Cat-V to Cat-VI. The Union and the management discussed the matter outside the court with a view to keep industrial harmony and good relationship and the dispute stands settled on the following conditions:—

a. "That the Sadanand and Mahulal have been given promotion *vide* office order No. 10A dated 3-1-2010 from mechanical Fitter Cat.V to Mechanical Fitter Cat-VI. They have been kept on probation for a period of 6 months. Copy of the said order is filed herewith.

b. That the case of the remaining claimants namely Gajanand and Sukhchand their case would be considered and appropriate orders will be passed if they are found fit for promotion."

The learned counsel for the management has submitted that the no dispute award be passed in the case. The learned counsel for the Union/workman has no objection if the reference is disposed of on the basis of above discussion.

5. The management has also filed a letter of the workmen Shri Sadanand and Mahulal given to Mines Manager, Mohan Colliery that in case the management promoted them in Cat- V and Cat-VI in financial year of 2009-10, they would withdraw the case. The application is signed by the office bearers of the union. The management has further filed an office order dated 3-1-2010 whereby the workmen Sadanand and Mahulal have been promoted from Cat-V to Cat VI with immediate effect. This clearly shows that the dispute of the workmen Shri Sadanand and Mahulal have been resolved.

6. The Union/workmen have filed the office order dated 12/13-6-94 which is marked as Exhibit W-1. This order clearly shows that other two workmen namely Shri Sukhchand and Gajanand had been promoted from mechanical fitter Cat-IV to Cat-V. The management has further agreed to consider their case for promotion in Cat-VI. The learned counsel for the Union/workmen has no objection. Thus it is clear that the parties have agreed to dispose off the reference.

7. Considering the above aspect of the case and the submission made by the management, the management is directed to consider the case of the workmen Shri Sukhchand and Gajanand for promotion from mechanical fitter Cat-V to Cat- VI within two months from the date of award and to pass appropriate orders. With above observation, the reference is answered.

8. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2012

का.आ. 3480.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल.

के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 43/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/10/2012 को प्राप्त हुआ था।

[सं. एल-22012/94/2008-आई आर (सीएम-II)]

बी.एम. पट्टनायक, अनुभाग अधिकारी

New Delhi, the 30th October, 2012

S.O. 3480.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the (Award Ref. No. 43/2009) of the Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, which was received by the Central Government on 30-10-2012.

[No. L-22012/94/2008-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/43/2009

Presiding Officer: Shri Mohd. Shakir Hasan

The General Secretary,
Samyukta Khoya Mazdoor Sangh (AITUC),
CRO Camp, Iklehra,
Chhindwara

... Workman/Union

Versus

The Chief General Manager,
WCL, Pench Area,
PO Parasia,
Chhindwara

... Management

AWARD

Passed on this 12th day of October, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No.L-22012/94/2008-IR(CM-II) dated 23-3-2009 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of M/s. WCL in not correcting the date of birth of Shri Dayaram as 6-1-1959 instead of 1-1-1955 is legal and justified? To what relief is the workman concerned entitled?"

2. The case of the Union/workman in short is that the workman Shri Dayaram was appointed at Bhamori Colliery of WCL, Pench Area on 6-1-1980 and his date of birth was recorded as 21 years in Form B and other statutory record. He was transferred to Gajandoh Colliery on 23-11-92 and in LPC his date of birth was wrongly mentioned as 25 years as on 6-1-1980. He came to know from PME Form that his date of birth was recorded as 6-1-1955. He represented several times but of no result. It is submitted that the management be directed to record his correct date of birth as 1-7-1959.

3. The management appeared and filed Written Statement. The case of the management, inter alia, is that admittedly Shri Dayaram was initially appointed on 6-1-1980 as General Mazdoor and was posted at Bhamori Colliery. He had declared his age as 25 years. He was transferred to Gajandoh Colliery and LPC was issued wherein the age was recorded as 25 years as on 6-1-1980. Accordingly Form B was prepared as Gajandoh Colliery. The workman did not raise any objection and signed himself in token of acceptance of the entries. The workman has not produced any authentic record in support of his claim of age as 1-7-1959. It is submitted that the action of the management is justified in not correcting his age as 1-7-1959.

4. During the course of reference proceeding the management filed a settlement signed by both the parties. The learned counsel for the management has submitted that the reference be disposed of in terms of settlement.

5. Perused the settlement. It appears that the workman Shri Dayaram and the Union Representatives on the one side and the management representatives on the other side have signed the settlement. The settlement appears to be in order. The following are the terms and conditions of the settlement—

निम्नलिखित शर्तों के अनुसार समझौता किया गया:—

1. श्री दयाराम साहू वल्ड छोटेलाल साकेटमेन एन.ई.आई.एस. क्र. 25234342 बी.जी. साईंडिंग की जन्मतिथि 06.01.1980 को 21 वर्ष अर्थात् 01.07.1959 एक जुलाई उनीस सौ उनसठ दर्ज करने हेतु सहमति दी गई।
2. कामगार/श्रमसंघ द्वारा सहमति दी गई कि दयाराम की जन्मतिथि बाबद भविष्य में किसी भी न्यायालय में प्रकरण नहीं लगाया जायेगा।
3. श्रमसंघ सी.जी.आई.टी. जबलपुर से उनके आयु विवाद का प्रकरण क्र. आर/43/09 वापस ले लेगा।
4. कामगार/श्रमसंघ द्वारा सहमति दी गई यह पूर्ण एवं अंतिम समझौता है।

5. कामगार/श्रमसंघ द्वारा सहमति दी गई यह समझौता अन्य प्रकरण में उदाहरण स्वरूप प्रस्तुत नहीं किया जायेगा।

Considering the above aspect, the reference is accordingly answered.

6. In the result, the award is passed in terms of settlement without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2012

का.आ.3481.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 47/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/346/1992-आई आर (सी-II)]

बी. एम. पट्टनायक, अनुभाग अधिकारी

New Delhi, the 30th October, 2012

S.O. 3481.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 47/93) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 30-10-2012.

[No. L-22012/346/1992-IR(C-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/47/93

Presiding Officer: SHRI MOHD. SHAKIR HASAN

General Secretary,
M.P.K.K.M.P (HMS),
PO Junnardeo,
Distt. Chhindwara (MP)

... Workman/Union

Versus

The Manager, WCL,
Damua Colliery,
PO Damua,
Distt. Chhindwara (MP)

... Management

AWARD

Passed on this 15th day of October 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-22012/346/92-IR(C-II) dated 23-2-93 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the Manager of Damua Colliery of Western Coalfields Ltd., Kanhan Area, PO Damua, Distt. Chhindwara (MP) in dismissing the services of Shri Panni S/o Basera, Casual D.P.R. w.e.f. 1-1-90 is justified? If not, to what relief the concerned workman is entitled to?”

2. The case of the Union/workman in short is that the workman Shri Panni was appointed as Casual/temporary worker in Damua Colliery of WCL. He worked for seven years. He was not served with any chargesheet, nor any enquiry was conducted against him by the management nor any opportunity was given to defend himself. His thumb impression was taken on papers and was allowed to join duty on 21-2-88. Later he was dismissed on 1-1-90. It is stated that the management had adopted to tactics to minimize the surplus strength. It is submitted that the order of dismissal be set aside and the workman be reinstated with back wages and consequential benefits.

3. The management appeared and filed Written Statement. The case of the management, *inter alia*, is that the workman Shri Panni was enlisted at Damua Colliery as a casual daily piece rated worker. Such casual labour were supposed to be present everyday at the work place for deployment as and where there was a need. He was very irregular and was not reporting at the work place. His absence was unauthorized and he was warned for his habit. He could be removed without notice. However he was served with a chargesheet dated 7-2-88 for his unauthorized absence. He accepted his lapses conditionally in his explanation. The management decided to conduct enquiry and Shri Pradeep Bannerjee was appointed as Enquiry Officer vide letter dated 29-2-88. Shri Panni was noticed. He participated in the enquiry. The workman admitted the charges unconditionally and voluntarily before the Enquiry Officer. The management examined witnesses and produced document to prove the charges. The statement of the workman was also taken by the Enquiry Officer. After conclusion of the enquiry, the Enquiry Officer submitted his report holding him guilty of the charges. The Disciplinary Authority agreed with the finding recommended for removing him from service. The competent authority passed the order of dismissal vide letter dated 31-12-1989. It is submitted that the workman is not entitled to any relief.

4292 GI/12-28

4. On the basis of the pleadings of the parties, the following issues are framed on recast for adjudication—

I. Whether the departmental enquiry conducted by the management against the workman is proper and legal?

II. Whether the punishment of dismissal awarded to the workman is justified?

III. To what relief the workman is entitled?

5. The Union/workman after appearing and filing the statement of claim became absent. Subsequently notices were sent even by registered post but the workman did not appear and therefore the then Tribunal proceeded the reference *ex parte* against the workman on 13-4-2005.

6. Issue No. I

This issue is taken up as preliminary issue. After hearing the management and after perusing the record of the departmental enquiry, it was held that the departmental enquiry conducted by the management against the workman is legal and proper vide order dated 13-6-07. Thus this issue is already earlier decided in the case.

7. Issue No. II

Now the important point for consideration is as to whether the punishment is proportionate to the charges proved against the workman. The record of the departmental proceeding shows that the workman had admitted the charges but had stated that he was ill during the said period. There was no evidence to corroborate the evidence of the workman that he was ill during the period of unauthorized absence and was not in a position to inform the management. The evidence in the departmental proceedings shows that he was absent from 16-3-87 to January 1988 and again May 1988 till the date of initiating departmental enquiry. It also appears that in previous years also, his attendance was very poor. This shows that the finding of the Enquiry Officer is not perverse. I do not find any reason to interfere in the punishment order awarded by the Competent Authority. This issue is therefore decided against the workman and in favour of the management.

8. Issue No. III

Considering the above discussion, I find that there is no merit in the case of the union/workman and the workman is not entitled to any relief. The reference is, accordingly, answered.

9. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2012

का.आ.3482.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जंबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/43/07) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/84/2006-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 30th October, 2012

S.O. 3482.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/43/07) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 25-10-2012.

[No. L-12012/84/2006-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/43/07

Presiding Officer : SHRI MOHD. SHAKIR HASAN
Shri Eklavya Tiwari S/o Shri Radheshyam Tiwari,
Village, PO : Saomini,
Distt. Rajnandgaon (CG) ... Workman

Versus
The Regional Manager,
Dena Bank,
Regional Office, Rukmani Bhawan,
Near Jai Ram Complex,
Raipur (Chhattisgarh). ... Management

AWARD

Passed on this 9th day of October 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/84/2006-IR(B-II) dated 28-5-2007 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of Dena Bank, Raipur, Regional Office, Raipur in terminating the services of the workman Ex. Messenger

Shri Eklavya Tiwari S/o Shri Radheshyam Tiwari w.e.f. 1-9-2004 is legal and justified? If not, to what relief the workman is entitled?”

2. The workman Shri Eklavya Tiwari appeared in the reference alongwith his lawyer on 7-1-08 but did not file statement of claim and any document. Lastly he became absent in the proceedings. Then the reference proceeded ex parte against the workman on 2-2-2011.

3. The management appeared and filed Written Statement. The case of the management in short is that the workman was engaged as a casual labour on daily wages by the Branch Manager, Saomini Branch of the Bank on exigency of work. The Branch Manager is required to engage any persons whenever regular sub-staffs are on leave. He was disengaged when his services were not required. It is stated that the provision of Industrial Dispute Act, 1947 (in short the Act, 1947) is not applicable in his case. He was never engaged for 240 days in any calendar year. It is submitted that he is not entitled to any relief.

4. The following issues are framed for adjudication—

I. Whether the action of the management in terminating the services w.e.f. 1-9-2004 is legal and justified?

II. To what relief the workman is entitled?

5. Issue No. I

The management has examined one witness in the case. The management witness Shri Jatin Haribhai Saravya is working as Asstt. General Manager in Dena Bank, Regional Office, Raipur. He has supported the case of the management. He has stated that Shri Eklavya Tiwari was engaged as casual labour on daily wages as per contingency. He had never worked 240 days in any calendar year. His evidence is unrebutted. His evidence shows that he shall not be continuous service for a period of one year during a period of twelve calendar months preceding the date with reference under the provision of Section 25-B of the Act, 1947. This shows that the provision of Section 25-F of the Act, 1947 is not attracted and therefore his termination from casual engagement by the Bank is justified. This issue is decided against the workman and in favour of the management.

6. Issue No. II

On the basis of the discussion made above, it is clear that there is no violation of the provision of Act, 1947 and the workman is not entitled to any relief. The reference is accordingly answered.

7. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2012

का.आ.3483.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 77/94) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/136/94-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 30th October, 2012

S.O. 3483.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947) the Central Government hereby publishes the Award (Ref. No. 77/94) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 25-10-2012.

[No. L-12012/136/94-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. I.D77/94

Sh. Ramesh Kumar C/o Secretary, Syndicate Bank, Employees' Union, Syndicate Bank, Jhajjar Road, Rohtak-124001.

...Applicant

Versus

General Manager, (Personnel), Syndicate Bank, Head Office, Manipal, Syndicate Bank, Post Box No. 1, Manipal-576119.

...Respondent

APPEARANCES

For the workman : B.N. Sehgal
For the management : Vipin Mahajan.

AWARD

Passed on: 17-10-2012

Central Govt. vide notification No. L-12012/136/94-I R (B-II) dated 11.08.1994, has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Syndicate Bank, Jammu in dismissing Shri Ramesh Kumar, Special Asstt. from service w.e.f. 16.12.1992 is justified? If not, what relief is the said workman entitled to?"

2. The above noted ID No. 77 of 94 has been received in this Tribunal on remand from the Hon'ble Punjab and Haryana High Court vide order dated 3.5.2012 passed in civil writ petition No. 16476 of 2009, vide which the award dated 5.1.2009 passed earlier by my predecessor Presiding Officer has been quashed and the matter remanded back to the Tribunal for further proceeding. The relevant direction passed by Hon'ble High Court is as under:

"To my mind, it would be fair and proper for the Labour Court to have permitted the workman to lead documentary and oral evidence for the first time before the Labour Court itself in terms of Section 11A of the Act to consider the plea of the workman either of innocence and to show that the order of dismissal was harsh and disproportionate to the misconduct. Section 11-A is not addressed only to the Management it posits a valuable right in a workman as well when the matter comes for the first time under judicial review. To my mind, this right has been breached by the Labour Court and, therefore, without going into the matter further and without expressing any opinion on the merits of the case, I would remand this matter to the Industrial Tribunal by calling upon the management to cross-examine the workman on his affidavit (P-3) and then take the matter to its logical conclusion. Since the matter is old, it is expected that the Tribunal would endeavour to dispose of the matter expeditiously and preferably within six months from the date of receipt of certified copy of this order. The petitioner would appear before the Tribunal on 15.06.2012 and thereafter the Tribunal would fix a date for further proceedings.

The Award stands quashed. The writ petition stands disposed of in the above terms."

3. On receipt of the order dated 3.5.12 passed in the CWP 16476/09, notices were issued to the parties. The parties appeared. The workman was cross-examined by the management on affidavit P-3, as directed by the Hon'ble High Court. The management also filed affidavit of Sh. S.K. Taneja, Chief Manager, in rebuttal who has been cross-examined by the learned counsel of the workman. Both parties choose not to lead other evidence except cross-examination of the workman on Ex. P-3 as directed by the Hon'ble High Court and affidavit of the management referred above.

4. Arguments heard I have gone through the entire record, evidence, enquiry file and other relevant documents placed before me.

5. To decide this reference afresh brief facts needs to be narrated. As per the claim statement of the workman, he was working firstly as clerk than promoted as Special Assistant and transferred to Jammu. He was issued charge-sheet dated 5.2.90 which runs into eight pages. The same is hereby reproduced as below."

"That while you were working as Special Assistant at our Jammu Branch during the period between 24.1.1987 and 16.9.1988 you:

- (1) Allowed debit balances in current account No. 405 of M/s. K.K. Enterprises;
- (2) Allowed debit balances of Rs. 4695.14 your S B Account No. SBS-40 on 2.12.1987;
- (3) Permitted overdrafts over and above the sanctioned limit in ODPS Account No. 3 of M/s. Kashab Pal & Co.;
- (4) Allowed overdrafts over and above the sanctioned limit in ODH Account No. 18 of M/s. Yashpal Girdharilal;
- (5) (a) issued cheques in the names of third parties without maintaining sufficient balance;
(b) got discounted 'Self' drawn cheques at our Jalandhar and Ludhiana Branches without maintaining sufficient balance in the account on which such cheques were drawn;
- (6) availed a loan of Rs. 15700 on 25.6.1987;
and
- (7) Allowed certain overdrafts/withdrawals in Current Account No. 309 of M/s. Krishna Trading Company.

Following circumstances appear on record in respect of the above transactions:

- (1) In the matter of allowing debit balances in Current Account No. 405 of M/s. K.K. Enterprises.

That the firm M/s. K.K. Enterprises said to be a proprietorship concern of one Shri Kewal Thaman, opened at our Jammu branch a Current Account No. 405 on 18.6.1987. The said account was introduced by you.

That at the commencement of business of the Branch on 23.11.1987, the above current account was showing a credit balance of Rs. 1128.50. On the said date you allowed a debit balance of Rs. 5871.50 in the account, by passing for payment the following cheques drawn on the account:

- (i) Cheque No. 0555259 for Rs. 2000
- (ii) Cheque No. 0555267 for Rs. 2500
- (iii) Cheque No. 0555262 for Rs. 3500

That thereafter further debit balances were allowed by you in the above current account as per the details furnished herebelow:

Date allowed	Cheque No.	Amount of the Cheque (Rs.)	Debit balance
30.10.87	0555261	5000.00	9457.00
26.11.87	0555268	1219.20	7091.70
15.12.87	0555271	10000.00	8789.70

Irregularities observed in the above transactions are:

- (a) That during the period when debit balances were allowed in the above said current account from time to time, you were not empowered to allow debit balances in current accounts. Further the Manager of the Branch was present at the branch on the days when debit balances were permitted by you in the accounts as stated above. Therefore, the debit balances permitted by you were unauthorized.
- (b) That debit balances were permitted in the account against self drawn cheques also and that there is nothing on the records of the Branch indicating the purpose for which the advances were sought for by the party from time to time and also the purposes for which the monies advances were utilized;
- (c) That the firm M/s. K. K. Enterprises was not/has not been carrying on any business at the given address;
- (d) That the cheque No. 555261 was passed for payment by you by allowing a debit balance of Rs. 9457 in the account. However, after passing the cheque for payment you wrongly arrived at a credit balance of Rs. 543 in the account for reasons best known to you.

- (2) In the matter of allowing a debit balance of Rs. 4695.14 in your SB Account No. SBS-40:

That on 2.12.1987 you passed for payment in your above SB account a withdrawal slip bearing No. 828911 drawn for Rs. 2400 by permitting a debit balance of Rs. 4695.14.

This debit balance was cleared by you only 1.1.1988.

Irregularities in the above transaction are:

- (a) That the debit balance allowed by you in your SB account as said above is unauthorized.
- (b) That you did not report the fact of allowing debit balance in your own SB account to the Manager of the Branch in good time.
- (3) In the matter of allowing overdrafts in ODPS A/c No. 3 of M/s. Keshab Pal & Company:

That M/s. Keshab Pal & Co., had been enjoying an ODPS limit of Rs. 2.00 lakhs at our Jammu Branch, vide ODPS Account No. 3.

That at the commencement of business of the branch on 17.11.1987, the above ODPS was showing a debit balance of Rs. 533697.67 as against the sanctioned limit of Rs. 2.00 lakhs. On the said date, with certain debit balance and credit transactions that have taken place in the account, at a particular point of time, the a/c was showing a debit balance of Rs. 753626.67. At that point of time, you passed for payment in the account a cheque drawn for Rs. 19928.05. With the debit of this cheque, the outstanding balance in the account rose to stand at Rs. 773554.72 as against the sanctioned limit of Rs. 2.00 lakhs.

That at the commencement of business of the branch on 1.12.1987 the said ODPS account was showing a debit balance of Rs. 449788.10. On the said date, with certain credits in the account, at a particular point of time, the account was showing a debit balance of Rs. 421324.10. At that point of time, you passed for payment in the account 7 cheques for sums aggregating to Rs. 125649. With the debiting of these cheques, the outstanding debit balance in the account had risen to Rs. 546973.10, thereby the sanctioned limit of Rs. 2.00 lakhs was overdrawn to the extent of Rs. 346973.10.

(4) In the matter of allowing overdrawals in ODH a/c No. 18 of M/s. Yash Paul Girdharilal:

That M/s. Yash Paul Girdharilal had been enjoying an ODH limit of Rs. 75000 at our Jammu branch vide ODH account No. 18.

That on 5.5.1988 and 6.5.1988, you permitted overdrawals in the above OD accounts as under:

Date	Amounts of the cheque sanctioned limit (Rs.)	Overdrawals permitted over & above the
5.5.88	81431.35	13497.44
6.5.88	62857.54	42856.98

Irregularities observed in the transactions referred to under items No.s (3) & (4) above are as under:

- That during the period when you permitted overdrawals over and above and sanctioned limits in OD accounts referred to under items No.s (3) & (4) above, you were not empowered to allow any overdrawals in the accounts. Further, the Manager of the Branch was present at the Branch on the dates when overdrawals were permitted by you in the accounts as stated above. Therefore, the overdrawals permitted by you were unauthorized.
- That you did not obtain any applications/letters of requests from the parties concerned requesting for overdrawals in their accounts.

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(c) That you permitted further overdrawals in ODPS account No. 3 of M/s. Keshab Pal & Co., referred to under item No. (3) above, when the account was already overdrawn much in excess of the sanctioned limit. There is nothing on records to show that you have obtained prior sanction from your higher authorities for permitting such overdrawals.

(d) That overdrawals in the accounts were permitted having no regard to the securities position.

(5) (a) In the matter of issuance of cheques in the names of third parties:

That, during the period between March, 1988 and July, 1988 you issued the following four cheques in the names of third parties, without maintaining sufficient balance in your SB account No. 40 with our Jammu Branch, on which these cheques were drawn:

- Cheque No. 554343 for Rs. 400 favouring one Shri Krishna Kumar Anand.
- Cheque No. 554345 for Rs. 135.50 favouring one Shri K. K. Gupta;
- Cheque No. 554342 for Rs. 1000 favouring one Shri K. K. Anand;
- Cheque No. 219585 for Rs. 500.50 favouring one Shri P.K. Mittal.

It was not proper on your part for having issued cheques without maintaining sufficient balance in your account on which they were drawn:

5(b) In the matter of getting certain cheques discounted at our Jalandhar and Ludhiana branches:

That during the period between 13.6.1987 and 14.5.1988 you got discounted certain cheques at our Jalandhar and Ludhiana branches which were drawn on your SB account No. 40 maintained with our Jammu branch. The details of the cheques so discounted are as under:

Cheque No.	Amount	Dated of Discount	Branch where discounted	Bal. in A/c SBS 40 on Date (Rs.)	Realised Jammu Br.
114060	1500.00	13.6.87	Ludhiana	512.55	04.7.87
554347	2000.00	13.5.88	Jalandhar	17.80	30.5.88
200724	1000.00	14.5.88	Ludhiana	17.80	01.6.88

Irregularities observed in the above transactions are as under:

That on the date of discounting the cheques at our Jalandhar and Ludhiana branches as said above your above SB Account No. 40 at our Jammu Branch on which these cheques were drawn, was not having sufficient balance to meet the amounts of these cheques. When the cheques

were received at our Jammu branch, you detained/caused to be detained the same till sufficient balance was available in the account.

(6) In the matter of availing a loan of Rs. 15700 on 25.6.87:

That our Divisional Officer, Chandigarh had sanctioned an SOD limit of Rs. 9900 to you during April, 1986, against that security of pledge of NSCs worth Rs. 11000, when you were working as Clerk at our Ludhiana branch. The SOD limit was arranged at our Ludhiana branch on 28-4-1986 by obtaining the following NSCs as security

- (i) NSCF 159810 - Rs. 5000
- (ii) NSCF 189360 - Rs. 5000
- (iii) NSCF 393571 - Rs. 1000

That on your transfer to our Jammu branch, the SOD account was also transferred to Jammu branch. At that time of transfer, the said account was overdrawn to the tune of Rs. 1740 over and above the sanctioned limit of Rs. 9900. SOD a/c No. 4 was arranged at our Jammu branch in your name on 17.6.1987.

That thereafter on or about 17.6.1987 you applied for an SOD limit of Rs. 15700 vide your loan application dated 17.6.1987, against the security of pledge of NSCs for Rs. 17500 which included the NSCs already taken as security for your SOD account No. 4 referred to above. It is observed from the date sheet submitted by you along with the loan application the following:

- (a) No details regarding the following existing liabilities were furnished:
 - (i) SOD A/c No. 4 - Rs. 11640;
 - (ii) ODDA/c No. 43 A - Rs. 26643.15;
 - (iii) OSLA/c No. 20/Gen - Rs. 1300.60
- (b) The demand loan accounts with an outstanding balance of Rs. 19123 was shown as regular whereas it was overdue by an amount of Rs. 2915.15.
- (c) The details of the second stage housing loan availed by you at our Ludhiana branch on 7-2-87 were not furnished.

That relying on the information submitted by you. Our Divisional Officer, Chandigarh sanctioned fresh OSL limit of Rs. 15700 to you against the security of NSCs worth Rs. 17500.

That the NSCs of face value of Rs. 11000 offered as security towards the OSL facility, were actually encumbered to the Branch in respect of your SOD account referred to above. Therefore, while getting released the OSL facility against the security of very same NSCs alongwith other NSCs of face value of Rs. 6500 you should have cleared

your liability under the SOD account. This was not done. Instead, the overdraft facility was allowed to continue as it was with security of NSCs of face value of Rs. 11000 and you availed an OSL facility of Rs. 15700 from the branch on 25-6-1987 against the pledge of fresh NSCs of face value of Rs. 6500 only vide OSL/Gen Account No. 21/87.

The proceeds of the loan amounting to Rs. 15700 were utilized by you as under:

- (a) An amount of Rs. 5000 was received by you in cash.
- (b) The balance amount of Rs. 10700 was transferred to your ODD account and withdrawn by you subsequently, in stages.

The present position of your SOD account No. 4 and OSL account No. 21/87 is as under:

- (i) SOD Account No. 4 : Balance of Rs. 15165.82—the outstanding balance is fully overdue.
- (ii) OSL/Gen. A/c. No. 21/37 : Balance outstanding is Rs. 19137, an amount of Rs. 6816.30 is over due.

(7) In the matter of overdrafts/withdrawals allowed in Current Account No. 309 of M/s. Krishna Trading Company:

That M/s. Krishna Trading Company was a proprietorship concern with one Shri Ram Pal Aggarwal as its proprietor.

This firm had opened its current account No. 309 at our Jammu Branch on 29-11-1985.

(a) Regarding overdrafts allowed in the account:

That at the commencement of business of the branch on 29-9-1987 current account No. 309 of M/s. Krishna Trading Co. was showing a credit balance of Rs. 42.62. On the said date, you authorized for payment in the account the following two cheques:

- (i) Cheque No. 0557939 dated 29-9-1987 for Rs. 760 favouring M/s. Harish Chand Brothers;
- and
- (ii) Cheques No. 0557935 dated 29-9-87 for Rs. 2500 favouring M/s. Jag Raj & Sons.

With the passing of these two cheques, a debit balance of Rs. 3217.38 was resulted in the account.

That thereafter, during the period between 9-10-78 and 16-3-88, you permitted debit balances from time to time ranging from Rs. 2768.80 to Rs. 3268.01 in the said current account by authorizing for payment various cheques drawn on it.

That during the material period, you had no powers to allow debit balances in current accounts. There is nothing

on the records of the branch to indicate that you had brought the fact of allowing debit balances in the current account to your higher authorities.

(b) Regarding withdrawals permitted in the account:

That on 28.4.1988, an amount of Rs. 1000 was credited to the above current account in cash. The entry in respect of this credit of Rs. 1000 was made by you in the relative ledger folio. In the balance column the balances were however, written as Rs. 14572.42 as against Rs. 5572.42, thereby enhancing the balance by Rs. 9000 by resorting to manipulation. That on 3-5-88, current account No. 309 of M/s Krishna Trading Company, was showing a credit balance of Rs. 18784.29 as against the actual balance of Rs. 9784.29. On the said date, there were credits in the account to the tune of Rs. 2690.50 as well as debits to the tune of Rs. 16906.27. In actually with these credits and debits, the account should have shown a debit balance of Rs. 4431.

That on that day, you passed for payment in the account a cheque bearing No. 699892 dated 28.4.1998 favouring M/s. Roop Prakashan for Rs. 10,000. With the debit of this cheque the debit balance in the account should have been Rs. 14431.40 whereas you have shown the debit balance as Rs. 5431.48 in the ledger folio.

That thereafter, on 5.5.88, you entered and passed for payment in the account yet another cheque bearing No. 699893 dated 3.5.88 for Rs. 2000/- favouring M/s Gowri Shankar Vipin Kumar. With this debit, you showed the debit balance in the account as Rs. 5431.48 which was subsequently shown as Rs. 7431.48. The actual debit balance in the account on that day should have been Rs. 16431.48. You had no authority to allow such debit balances.

It is now reported that during April, 1988, you obtained a cheque bearing No. 699892 dated 28.4.88 for Rs. 100,00 from the said M/s. Krishna Trading Co., drawn in favour of M/s Roop Prakashan for your benefit and that the impugned cheque was passed for payment by you by committing irregularities in the account as stated above. It is also reported that in consideration to the above you made available the following two cheques to the said M/s. Krishna Trading Co.:

- (i) Cheque bearing No. 699266 dated nil for Rs. 10000 drawn on your ODD Account at Jammu Branch favouring M/s Krishna Trading Co.;
- (ii) Cheque No. 305719 dated nil for Rs. 10000/- issued by M/s. Roop Prakasan favouring M/s Krishna Trading Co. and drawn on State Bank of India, Jammu Cant.

By your above acts, you committed acts as "gross misconduct" within the meaning of clause No. 19.5 of the Bipartite Settlement".

6. The workman was charge sheeted as above and "for doing acts prejudicial to the interests of the Bank" vide clause No. 19.5 (j) of the Bipartite Settlement. Pending completion of the departmental enquiry into the above charges, the workman continued to be under suspension. The workman was required to submit written statement of defence, if any, within 15 days of receipt of this charge sheet.

7. The workman vide letter dated 30-8-90 replied the charge-sheet stating therein that charges are baseless and has no bearing on him. Dissatisfied with the reply, the management appointed Enquiry Officer. With due intimation to the workman the enquiry was conducted. The management and the workman examined witnesses in during the enquiry proceedings. The Enquiry Officer submitted the enquiry report. The parties were allowed to submit their written briefs and after that Enquiry Officer Sh. P.P. Shetty submitted his enquiry report dated 16-3-92 providing the charges levelled against the workman.

8. The workman was given show cause notice by the Disciplinary Authority and Disciplinary Authority provided personal hearing to the workman on 25.7.92 and the workman who was under suspension at that time dismissed from service vide order dated 16.12.92. His appeal was also rejected by the Appellate Authority after providing him personal hearing on 11.5.93. The matter came before this Tribunal. Claim petition was filed by the workman in which he has pleaded that he was promoted by the management considering his previous record. Due to enmity with the Branch Manager he was issued charge-sheet on frivolous and manipulated allegations, which was replied by him stating therein that such charge-sheet is manipulated on false and frivolous allegations and the management took two years to frame the charges against the workman after suspending him in the year 1988. The workman assailed the charge-sheet on the ground that it does not contain the documents to be relied upon by the management in support of the charges during enquiry and he was unable to make the defence without going through the documents. Regarding charge No. 1 it is submitted that the entry of Rs. 1000 has been made by mistake instead of debit made in the column of credit of Rs. 10,000 and this mistake was rectified later on when it came to his notice and the account has been closed and there is no loss to the bank. Similarly regarding charge No. 2 it is pleaded in the claim statement that the salary of workman was lying in the suspense account which has to be credited into his account and it was duly in the knowledge of the Manager that it has to be credited into the account of the workman after receiving leave application and accordingly the debit balance was allowed with the money of the workman which were lying in the suspense account and after 2/3 days which was credited into his account by the manager himself and the account was clear. Regarding charge No. 3 it has pleaded by the workman that limit of overdraft which was submitted

though the overdraft of M/s Keshopal and Co. was of Rs.2,00,000 but they were enjoying the facilities of Rs.2,00,000 since 1987 with the consent of the Branch Manager being reputed Firm and rapport with the bank. There is no lapse on the part of the workman as this practice was going on in the bank previously also. As regard charge No. 4, it is submitted that the overdraft limit was Rs. 75,000 but they were enjoying over and above of the same. With regard to charge No. 5 it is submitted that workman issued cheque to the third party only with the intention that will get the money after the credit of his salary in his account and the said cheque were passed by them only when there was a sufficient fund in his account and there is no case made out against the workman. Further with regard charge No. 6 it has pleaded by the workman that loan was taken against National Saving Certificates with the permission of the District Manager. Regarding charge No.7 it has been pleaded by the workman that minor lapse was due to of wrong account which was not intentional and such type of wrong entries are still made by the official during the normal course of duties, and it is matter of routine and due to personal enmities these have been exaggerated just to frame the charges against the workman. No case is made out against the workman. The Enquiry Officer taken the side of the management and he was hand in glove with the representative of the management. The documents asked by the workman were not allowed to be produced by the Enquiry Officer. It is the duty of the management to prove the charges but due to biasness of the Enquiry Officer, the Enquiry Officer directed the workman to prove his innocence against the settled principal of law. There are contradictions in evidence of the management witnesses which was brought to his notice but he has not considered the same. The customers of the bank were availing the facility of overdraft earlier also before his joining the branch but the Enquiry Officer stick to the charges levelled against the workman only. There are no charges of any embezzlement and fraud against the workman and he was victimized with malafide intention of the Branch Manager who was inimical to the workman. The Enquiry was not conducted in fair and proper manner by the Enquiry Officer and the charges were proved by the Enquiry Officer without appreciating the evidence on record. The Disciplinary Authority also without considering the material on record passed the dismissal order on 16-12-93. The appeal was also dismissed in the same manner. He prayed that he may reinstated in service with continued in service and full back-wages by quashing the order of dismissal.

9. The management filed the written statement stating therein that the workman was charge-sheeted on various acts of omission and commission. He was served with the charge-sheet. His reply was found unsatisfactory and Enquiry Officer was appointed. The Enquiry Officer conducted the enquiry in fair and proper manner in

accordance with the principal of natural justice the workman was provided full opportunity to cross-examine the witnesses of the management and to produce his defence in rebuttal and after conducting the enquiry, show-cause-notice was given taking into consideration the report of the Enquiry Officer and personal hearing of the workman the Disciplinary Authority dismissed the workman from service and Appellate Authority also after providing him opportunity of personal hearing dismissed the appeal of the workman with the observation that there is no ground to interfere in the punishment order.

10. The workman examined on his affidavit and management also examined one witness in evidence arguments heard in detail.

11. The learned counsel for the workman during arguments mainly assailed the enquiry proceedings on the plea that there is no loss to the bank in any of the transaction. Before the joining of the workman overdraft facility was enjoyed by the different customers and there were minor mistakes and there is no charge of any embezzlement and also the punishment of dismissal disproportionate to the alleged misconduct. There is no previous misconduct on the part of the workman and there was no ill motive on part of the workman and workman was greatly prejudiced by not supplying the relevant documents and examination of the material witness refusal by the Enquiry Officer. It is further argued that there is no corroborative evidence prove the allegations against the workman. Therefore, he may be reinstated in service by quashing the dismissal order.

12. The learned counsel for the management during arguments submitted that enquiry has been conducted in fair and proper manner in accordance with the principal of natural justice and the judgment cited by the learned counsel for the workman has no relevancy and not applicable in the facts and circumstances of the present case. He was served charge-sheet contained serious allegations of misconduct for which enquiry have been conducted complying with all canons of principle of natural justice. The punishment is not disproportionate as the charges are serious in nature and the workman is not entitled to any relief.

13. From the allegations mentioned above, the following points arise for adjudication:

1. Whether the enquiry officer has adopted a fair and reasonable procedure while conducting the enquiry and has ensured the compliance of the principles of natural justice ?
2. Whether there was a practice in the bank for clearing the cheques even in the accounts having debit balances and the acts of such clearance by the workman has any nexus with the so called practice?

3. Whether the enquiry officer has rightly held all the charges well proved against the workman?

4. Whether the punishment given by the disciplinary authority is in proportionate to the misconduct committed by the workman?

14. Point No. 1

The Assistant General Manager/disciplinary authority issued charge sheet to the workman and the workman was called upon to reply. The workman replied the charge sheet. Thereafter considering the allegation against the workman, the disciplinary authority appointed enquiry officer to conduct the enquiry. Shri P.P. Shetty, enquiry officer conducted the enquiry. From the perusal of the charge sheet which runs in eight pages, it is very clear that each and every item of alleged misconduct and irregularities was clearly mentioned in the charge sheet. The workman participated in the enquiry proceedings and cross-examined the witnesses of the management also. The learned counsel for the workman during arguments submitted before this Tribunal that the workman was not given the list of witnesses and other documents. The management in this regard quoted the statement of workman Ramesh Kumar before this Tribunal in which workman Ramesh Kumar clearly stated that the (workman) was supplied list of witnesses and list of documents on the first date of enquiry. Workman submitted during arguments before this Tribunal that the then branch manager Shri S.K. Abrol had ill will against the workman. Workman's this submission is also without any substance, because the workman himself deposed before this Tribunal that he had not made any complaint against the then branch manager Shri S.K. Abrol that he had any malafide intention against the workman. On completion of the enquiry proceedings, copy of the enquiry report was given to the workman. Workman was afforded personal hearing also by the disciplinary authority. After thoughtful consideration disciplinary authority passed the order of punishment against the workman. Against this order workman preferred department appeal and the appellate authority also afforded opportunity of personal hearing to the workman. The Hon'ble Bombay High Court in the case of M/s. Permanent Magnets Ltd. Vs Umashankar Pandey and Another reported in 2005 LLR 1154 ruled that an enquiry will neither be illegal nor unfair when the delinquent workman had participated and cross-examined the witnesses of the management besides leading his evidence as well as his own statement in the enquiry.

15. The learned counsel for the workman also drawn my attention to the judgements 2010(3) 384 (P&H), 1999(1) SCT 203 (S.C.) 2006 (2) SCT 446 (S.C.) 2008 (4) SLR 711 (S.C.), 2005(2) SLR 700 (S.C.), 2003 (1) SCT 338 (P&H), 1987(5) SLR 680 (S.C.), 1999(1) SCT 303. The facts and circumstances of

the cases cited by the learned counsel for the workman are quite different from the facts and circumstances of the present case in hand. After thoughtful consideration, I am of the view that the case laws cited on behalf of the workman are not applicable to the present case in hand. Thus point No. 1 is answered accordingly against the workman.

16. Point No. 2 & 3 are interconnected and thus deals with jointly. Workman submitted that he has no concern with the account holder firm. From the perusal of the record, it is found that account holder M/s. Yash Pal Girdhari Lal General Merchant and Commission Agent 39 A Nehru Market Jammu and M/s. Kesh Pal and Company, Vanaspati Tea and Soap Merchant, Knak Mandi, Jammu wrote a letter mentioning therein that Ramesh Kumar (workman) had no cordial relation with account holder Yash Pal Girdhari Lal nor he has helped to the Firm. It is pertinent to mention here that the enquiry officer at page No. 23 of the enquiry report found that M/s. K.K. Enterprises with Shri Kewal Thaman as its proprietor opened a current account at Jammu branch and he was introduced by Shri Ramesh Kumar. The enquiry officer also found that the workman allowed debit balances of M/s. K.K. Enterprises on various dates. The workman was not empowered to allow various debit balances in current accounts. Allowing the debit balances by the workman Ramesh Kumar were unauthorized. The workman permitted overdrawal in the account over and above the sanctioned limited of the account holder. Workman Ramesh Kumar admitted in his statement before this Tribunal that routine mistakes were committed by him. Other charges against the workman were also found to be proved by detailed and reasoned enquiry report. Thus it is very clear that the workman though not authorized to permit the overdrawal facility still the workman allowed debit balance over the above of the sanctioned limit. I do not find any reason to interfere in the findings recorded by the enquiry officer. Thus the issues No. 2 and 3 answered against the workman.

17. Point No. 4. On the point of punishment, the learned counsel for the workman also cited case laws 1996(1) SCT 439 (P&H), 2008 (2) SCT 664 (S.C.), 2001 (1) SCT 299 (P&H), 2007(4) SLR 240 (S.C.) and 1988(3) SLR 643. The facts and circumstances of the cases cited by the learned counsel for the workman are quite different from the facts and circumstances of the present case in hand. After thoughtful consideration, I am of the view that the case laws cited on behalf of the workman are not applicable to the present case in hand.

18. So far the punishment awarded to the workman is concerned; this is not a case where a bona fide omission was committed. In the present case, workman committed gross misconducts continuously and there is no cogent and plausible reason to interfere in the punishment awarded by the management as the same is not disproportionate to the misconduct attributed to the workman.

19. In view of the above discussion, this Tribunal is of the view that the action of the management of Syndicate Bank, Jammu in dismissing Shri Ramesh Kumar, Special Assistant from service w.e.f. 16-12-1992 is justified and he is not entitled to any relief. The reference is answered accordingly. The Central Government be informed. File be consigned.

Chandigarh.

S.P. SINGH, Presiding Officer

Date 17-10-2012

नई दिल्ली, 30 अक्टूबर, 2012

का.आ. 3484.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 319/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल.-12011/158/2001-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 30th October, 2012

S.O. 3484.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 319/2001) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 25-10-2012.

[No. L-12011/158/2001-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No. ID 319/2001

Shri. Daya Nand Yadav C/o The President, Punjab National Bank Workers Union (NZ), EG 810, Mohalla Gobindgarh, Jalandhar (Punjab)-144001.

... Applicant

Versus

The Senior Regional Manager, Punjab National Bank, Regional Office, Rohtak- 124001.

... Respondents

APPEARANCES

For the workman : None

For the management : None

AWARD

Passed on 17.10.2012

Central Government vide notification No. L-12011/158/2001-IR (B-II), dated 28.11.2001 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Punjab National Bank in removing Shri Daya Nand Yadav from service and imposing the penalty of recovery of Rs. 53570 is just and legal? If not so. What relief the workman is entitled to?"

2. None is present on behalf of the parties today, Workman is not ensuring his presence it is the oldest Industrial Dispute and reference pending adjudication before this Tribunal since 2001 and is eleven year old. Earlier also for non-appearance of workman the above dispute was dismissed in default on 2-8-2010 and it was on the assurance of the workman that he will be present on the dates of hearing, this dispute was restored to its original number. After that workman again absented and it appears that he is not interested to pursue the present reference. Several opportunities have been given to the workman but he is not availing the opportunity of being heard. It is already 2.30 P.M. At this stage, I have no option otherwise then to dismiss the claim of workman in reference for non-prosecution and return the reference to the Central Government as such. Accordingly, the reference is returned as such. Let the Central Government be informed. File be consigned

Chandigarh

S.P. SINGH, Presiding Officer

17-10-2012

नई दिल्ली, 31 अक्टूबर, 2012

का.आ.3485.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. जीना एंड कम्पनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/56 ऑफ 2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 29-10-2012 को प्राप्त हुआ था।

[सं. एल-31011/3/2003-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 31st October, 2012

S.O. 3485.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT-2/56 of 2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Jeena & Company and their workmen, which was received by the Central Government on 29-10-2012.

[No. L-31011/3/2003-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT

K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/56 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. JEENA & COMPANY

The Manager

M/s. Jeena & Company
Elphinstone Building, 1st floor
10, Veer Nariman Road
Mumbai-400 001.

AND

THEIR WORKMAN

The Secretary

Transport & Dock Workers Union
P.D' mello Bhawan
P.D' mello Road
Carnac Bunder
Mumbai-400 038.

APPEARANCES:

FOR THE EMPLOYER: Mrs. Mitra Das, Advocate.

FOR THE WORKMAN Mr. A.M. Koyande, Advocate.

Mumbai dated the 6th September, 2012.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-31011/3/2003-IR(B-II), dated 16-02-2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the

following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. Jeena & Company, Mumbai by terminating the services of Shri Prasanna Mahakal Driver w.e.f. 14-5-2002 is justified or not? If not, what relief the workman Shri Prasanna Mahakal is entitled to?”

(2) After service of notices both the parties appeared through their respective representatives. In response to the notice, the second party filed statement of claim at Ex-7 and amended Statement of claim at Ex-7A. First party resisted the statement of claim vide their written statement at Ex-8.

(3) Second party filed rejoinder at Ex-9 in reply to the written statement of the first party. Issues were framed at Ex-11. After both parties led their evidence, matter was fixed for arguments on preliminary issues. Today when both parties were present, second party workman filed application Ex-27 for taking the matter on today's board. Orders were passed on Ex-27 and the matter was taken on today's board. Thereafter workman filed another application Ex-28 alongwith agreement stating that the dispute is amicably settled out of court and prayed that the reference may be disposed of as withdrawn.

ORDER

As dispute is settled amicably vice agreement dated 30.08.2012 filed with application Ex-28, the reference is dismissed for want of prosecution with no order as to cost.

Date: 6th September, 2012

K.B. KATAKE, Presiding Officer

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 2 AT MUMBAI

Ref. No. 2/56 of 2005

Management in respect of
M/s. Jeena & Company ...First Party

AND

Shri Prasanna Mahakal ...Second Party

MAY IT PLEASE YOUR HONOUR

Parties have settled this matter out of court. Hence agreement to that effect have been reached between the parties is annexed herewith. In view of the said settlement matter may be disposed of as withdrawn.

Mumbai

प्रसन्ना रघुनाथ महाकाल

6-9-2012

PRASANNA MAHAKAL
Second party workmen

Sd/-

Sd/-

Sd/-

AGREEMENT

This Agreement ("Agreement") is made and entered into at Mumbai on this the 30th day of August, 2012. ("Effective date")

BETWEEN

M/s. Jeena and Company, a Company registered under the Indian Partnership Act, having its office at Elphinstone Building, 1st Floor, Veer Nariman Road, Mumbai—400 001, (hereinafter referred to as the "Company") which expression shall unless it be repugnant to the context or meaning hereof means and includes its successors and permitted assigns, of the First Part;

And

Mr. Prasanna Mahakal aged about 53 years, an Indian National having permanent/current residence at Room No. 2, Navjivan Zopadpatti Sangh, Near Quila, Worli Koliwada, Mumbai-400 030 (hereinafter referred to as the "Ex-employee") which expression shall unless it be repugnant to the context or meaning hereof means and includes his/her successors and permitted assigns of the Second Part;

WHEREAS:—

- A. The Company had employed Mr. Prasanna Mahakal as a driver *w.e.f.* 01-08-1997.
- B. And whereas Mr. Prasanna Mahakal came to be dismissed from the services of the Company on 14-05-2002 for proven misconduct pursuant to a domestic enquiry conducted against him.
- C. And whereas Mr. Prasanna Mahakal, the Ex-employee challenged his dismissal, which came to be referred to the Hon'ble Central Government Industrial Tribunal—2, Mumbai bearing No. Ref. CGIT No. 2/56/2005 and is still pending before the Hon'ble Tribunal.
- D. And whereas the Ex-employee being desirous of an out of Court settlement has approached the Company on 9th August, 2012.
- E. And whereas the Company and the Ex-employee have had a series of discussions and have agreed to settle the matter on the following terms and conditions.

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERE TO AS FOLLOWS:

1. The Company shall pay the Ex-employee an amount of Rs. 2,50,000 (Rupees Two Lakhs Fifty Thousand Only) which is inclusive of his legal/service dues and Ex-gratia amount. It is clearly understood by the Ex-employee that the amount receivable by him shall be subject to deduction of tax at source as per statutory requirements.

2. The Ex-employee undertakes to unconditionally withdraw Ref. CGIT No. 2/56/2005 which is pending before the Hon'ble Central Government Industrial Tribunal-2, Mumbai.
3. The Parties undertake to file a copy of this Agreement before the Hon'ble Central Government Industrial Tribunal-2, Mumbai where Ref. CGIT No. 2/56/2005 is pending.
4. The Ex-employee understands and agrees that the amount of Rs. 2,50,000 receivable by him shall be payable by the Company only after the award is passed by the Hon'ble Central Government Industrial Tribunal-2, Mumbai disposing of Ref. CGIT No. 2/56/2005 in terms of this Agreement.
5. The Ex-employee understand and agrees that the payment under this agreement shall only be effected only after necessary award is passed by the Hon'ble Central Government Industrial Tribunal-2, Mumbai disposing of Ref. CGIT No. 2/56/2005. The Ex-employee further understands that the payment shall be effected by the Company within 2 days of the award being passed by the Hon'ble Central Government Industrial Tribunal-2, Mumbai disposing of Ref. CGIT No. 2/56/2005. On receipt of the said amount of Rs. 2,50,000 the Ex-employee shall sign a receipt of full and final payment. The Ex-employee agree and understands that, no further amount apart from Rs. 2,50,000 is payable by the Company to the Ex-employee.
6. The Ex-Employee understands and agrees that after receipt of the amount of Rs. 2,50,000 neither he, nor his legal heirs, representatives and/or assigns will make any claims of any nature whatsoever, financial or otherwise relating to the terms of employment or dismissal from the Company.
7. The Ex-employee understands and agrees that no further dispute and/or legal proceedings of any nature shall be raised against the Company, its employee, officers, directors, successors and/or permitted assigns by the Ex-employees or by any one claiming through him or on his behalf.
8. The Ex-employee understands and agrees that he has entered into this Agreement on his own free will and volition and not through any coercion, fraud or misrepresentation.
9. The Parties to this Agreement agree that the same is to be treated as a settlement within Section 2(p) of the Industrial Disputes Act, 1947.

In Witness Whereof this Agreement has been executed by or on behalf of the Parties on the date set out above.

Signed on behalf of

Jeena & Company

Signature :

Name: Khushrow Major

Designation: Authorised Signatory

In the presence of:

Witness:

1. Ramesh R.B.

2. Rajeev Munje

Signed By Mr. Prasanna Mahakal

Signature:

In the presence of:

Witness:

1.

2.

नई दिल्ली, 31 अक्टूबर, 2012

का.आ.3486.——औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिम्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/222/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/122/2003-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 31st October, 2012

S.O. 3486.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/222/2003) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Bank of India and their workman, which was received by the Central Government on 26-10-2012.

[No. L-12012/122/2003-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING
OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/222/2003

Date: 04-10-2012

4292 GI/12-26

Party No.1 : The Asstt. General Manager,

Bank of India, Nagpur Zone, Zonal Office,

S.V. Patel Marg, PO Box No.4,

Nagpur-440001.

Versus

Party No. 2 : Shri Rajkumar Bhadu Gajbhiye,

R/o Mukam Kamtha, Tahsil and Distt.

Gondia—Maharashtra.

AWARD

(Dated: the 04th October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman, Shri Rajkumar Gajbhiye, for adjudication, as per letter No.L-12012/122/2003-IR (B-II) dated 15.09.2003, with the following schedule:—

"Whether the action of the management of Bank of India in terminating the services of Shri Rajkumar S/o. Bhadu Gajbhiye, Casual/Badli Sepoy at the Kamtha Branch of the Bank without complying with provisions of Section 25-F of the ID Act, 1947 is justified? If not, what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Rajkumar Gajbhiye, ("the workman" in short), filed the statement of claim and the management of Bank of India, ("Party No.1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he belongs to schedule caste category and is educated up to 9th standard and he was working in Kamtha branch of the Bank of party No.1 w.e.f. 22-05-1984, as a casual/Badli Sepoy and his name was sponsored by the Employment Exchange vide letter dated 09-11-1989 for class IV category and being sponsored by the Employment Exchange on 09.11.1989, he was engaged on regular basis and he worked with the Bank continuously till 10-08-2002 and his wages at the rate of Rs. 50 per day was being paid by the party No.1, but he was not being given any benefit of casual leave, medical leave etc. and also the benefit of provident fund and ESI and he was deprived of the privileges granted to other similarly situated employees of

party No.1 and after completion of 240 days in the year 1999-2000, his name was recommended by Kamth Branch for permanent service in the Bank, to the concerned higher authority, but his services came to be orally terminated w.e.f. 10-08-2002, without compliance of the legal provision as envisaged under the Act and as such, his termination from services is illegal, improper and contrary to law. The further case of the workman is that the party No.1 is a Nationalised Bank and is an Industry having several branches all over the country and he is a workman within the definition of Section 2 (S) of the Act and as he had completed more than 240 days of work, he had acquired the status of a permanent employee and he had worked with party No.1 continuously since the year 1984 to 10-08-2002 and before termination of his services, neither one month's notice nor any retrenchment compensation was given to him by the party No.1 and there was violation of the provisions of Section 25-F of the Act and as such, his termination from services is illegal and bad in law and though there was sufficient work to provide him, in order to deprive him from getting the benefits and privileges of permanency, his services were terminated by party no.1.

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party No.1 in their written statement denying all the allegations made in the statement of claim has pleaded inter-alia that at no point of time, the workman was appointed by the Bank and as such, the question of granting any benefit much less the one stated in the statement of claim does not arise and the workman had never completed 240 days service in the Bank and his name was never forwarded to the higher authorities for making him permanent in service and as the workman at no point of time was in the employment of the Bank, the question of his termination from services, much less by following the legal provisions envisaged under the Act does not arise. The party no.1 have also pleaded that the workman was not a workman within the meaning of Section 2 (S) of the Act and the workman is not entitled to any relief.

4. To prove his case, the workman has examined himself as a witness, besides placing reliance on documentary evidence. The workman has reiterated the facts mentioned in the statement of claim, in his examination-in-chief, which is on affidavit. However, in his cross-examination, the workman has admitted that no appointment letter was issued to him for working with the Bank from 22.05.1984 and he has not filed any muster roll, attendance register or any other document to show that he worked with the Bank from 1984 to till 10.08.2002 and he has not submitted any document of the Employment Exchange, Bhandara dated 09.11.1989 and he did not receive any appointment letter from the Bank to work from 09.11.1989 on regular basis and he has not filed any document to show that he worked with

the bank till 10.08.2002 and he did not receive any order of termination in writing and he has not mentioned in his affidavit, the name and designation of the person, who terminated his services and neither in his statement of claim nor in his affidavit, he has mentioned as to how he get the documents, Exts. W-I to W-III.

5. The workman has also has examined one Shri Khemraj Jaipal Gajbhiyc as a witness in order to prove his case. Witness Khemraj has stated that he retired from service of Bank of India as a peon on 15.12.2000 under the voluntary retirement scheme and while he was working at Kamatha branch of the bank as a peon, the workman was also working as a peon with him in the said branch and the workman used to receive Rs.50.00 per day and on completion of 240 days in 1999-2000, his name was recommended for making him permanent and the workman worked from 1984 onwards and he was employed through Employment Exchange. In his cross-examination, this witness has admitted that he has not filed any document to show that he was working as a peon in Bank of India.

No evidence, either oral or documentary was adduced by party No. 1.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 w.e.f. 22.05.1984 as a casual Badli Sepoy and his name was sponsored by the Employment Exchange on 09.11.1989 in class-IV category, after which, he was employed on regular basis and he worked continuously till 10.08.2002 and completed more than 240 days of work before termination of his services on 10.08.2002 and before termination of the services of the workman, the mandatory provisions of Section 25-F read with Section 25-B of the Act were not complied with and neither one month's prior notice nor one month's pay in lieu of notice nor retrenchment compensation was given to the workman as required under Section 25-F of the Act and as such, the termination of the workman was illegal and the evidence of the workman and his witness, Shri Khemraj Jaipal Gajbhiye has established the claim of the workman and therefore, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that in the statement of claim, the workman has pleaded that he was a daily wager and he had completed 240 days of work in the Bank continuously till 10.08.2002 and the Bank has denied such claim of the workman and as per the provisions of Section 25-F of the Act, proof of continuous service of one year prior to the date of retrenchment is mandatory and it is well settled by the Hon'ble Apex Court in catena of decisions that the burden of proof of working for 240 days continuously is on the

workman and in the present case, except the affidavit of the workman, no other evidence is placed on record in that regard. It was further submitted by the learned advocate for the Party No. 1 that in his cross-examination, the workman has admitted that no appointment order was issued to him and he has not produced any muster roll, attendance register or any other document to show that he had worked with the Bank from 1984 till 10-08-2002 and the workman has failed to prove that he was in employment of the Bank and he had completed 240 days in the preceding 12 months of the date of the alleged termination and the documents placed on record by the workman do not prove his claim and the said documents are also not worth consideration, because on perusal of the document, Ext. W-I, it could be found that the same is not on the letter head of the Bank, the same does not bear the signature of the authorized person, no date has been mentioned on the said document and the same is a hand written document and the person who had written the said document has not been examined by the workman to prove the same and Ext. W-II is a letter issued by the Branch Manager of the Bank to the Officer of the Employment Exchange seeking fresh list of Badli Sepoy, as the persons, whose names were mentioned in the said letter had completed their respective period of appointment and even if, the said document is taken for consideration at its face value, the same does not show that the workman had completed 240 days of continuous work, prior to the date of termination as the said document is dated 10.12.1990 and Ext. W-III is a list submitted by the officer of the Employment Exchange to the Branch Manager of the Bank indicating that the persons named in the list had completed their respective period of appointment and the said document is dated 9.11.1981 and the contents of all the three documents are not proved by the workman by examining the appropriate persons and though the said documents have been exhibited, the same do not require consideration and as the workman has failed to prove his case, the workman is not entitled to any relief.

In support of the submissions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in AIR 2002 (SC) - 1147 (Range Forest Officer Vs S.T. Hadimani), AIR 2006 SC - 110 (Surendranagar District Panchayat Vs Dahyabhai Amarsing) and 2009 (II) SCC - 522 (Krishna Bhayya Jala Nigam Ltd. Vs. Mohammad Rafi).

8. Before delving into the merit of the matter, I think it necessary to mention about the principles enunciated by the Hon'ble Apex Court in the decisions cited by the learned advocate for the Party No. 1.

9. In the decision reported in AIR 2002 (SC) - 1147 (supra), the Hon'ble Apex Court have held that :—

“Labour Law:— No compensation paid workman filing affidavit that he had worked for 240 days —

Management denied the contention of the workman—Onus of proof — Filing of affidavit not sufficient evidence — Tribunal wrong to place onus on the management without first determining on the basis of evidence placed that the workman had worked for more than 240 days, in the year preceding his termination — Award set aside. Held: In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court of Tribunal to come to the conclusion that a workman has, in fact, worked for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

10. In the decision reported in AIR 2006 SC — 110 (supra), the Hon'ble Apex Court have held that:—

“Industrial Disputes Act, 1947 Sections 2(oo), 25B and 25F—Retrenchment — Continuous service — Burden of proof — Necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination — Apart from the oral evidence the workman has not produced evidence to prove the fact that he has worked for 240 days — No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted — Workman has failed to discharge his burden — Workman-respondent is not entitled for the protection or compliance of Section 25F of the Act before his service was terminated by the employer — Appeal allowed.”

11. In the decision reported in 2009 (II) SCC — 522 (supra), the Hon'ble Apex Court have held that:—

“Industrial Disputes Act, 1947 — Section 25F and 10 — Termination — Continuous work of 240 days — Burden of proof — Initial burden of proof was on the workman to show that he had completed 240 days of service and not on management — Mere

affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year—Mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management—Appeal allowed.”

12. It is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that in order to get the benefit of the provisions of Section 25-F of the Act, it is necessary for the workman to prove that he worked for 240 days, in the year preceding his termination and such burden is on the workman and mere filing of an affidavit by the workman is not sufficient to discharge the burden.

So, keeping in view the principles as enunciated by the Hon'ble Apex Court in the decisions as mentioned above, now, the present case in hand is to be considered.

13. It is clear from the pleadings of the workman and the evidence produced on record that the claim of the workman is that he worked with the Bank from 1984 to 10-08-2002 continuously on daily wages and he had completed more than 240 days of work in the preceding 12 calendar months of the date of his termination i.e. 10.08.2002. The Party No. 1 have denied the claim of the workman. So, now, it is to be found out as to whether the workman has been able to discharge the burden of proving that actually he had worked for 240 days in the preceding 12 calendar months of 10-08-2002.

14. To prove his case, the workman besides examining himself has examined one Khemraj Jaipal Gajbhiye as a witness, as already mentioned earlier. Besides the oral evidence, the workman has also produced and exhibited three documents, Exts W-I to W-III in support of his claim. Though, the workman in his evidence has claimed that he had worked for 240 days in the preceding 12 calendar months of 10.08.2002, in his cross-examination, he has admitted that he has not produced any document to show that he worked with the Bank till 10.08.2002. Witness, Khemraj though has stated that the workman had worked at Kamtha Branch of the Bank as a Peon and he had completed 240 days of work in 1999-2000, he has not stated a single word about the workman completing 240 days of work in the preceding 12 calendar months of 10.08.2002.

So far the documentary evidence is concerned, Exts W-I to W-III do not disclose about the workman working for 240 days in the preceding 12 calendar months of 10.08.2002. Ext W-I shows that the same relate to the working

of the workman in the year 1999-2000. Moreover, on perusal of the said document, it is found that there is nothing in the same to know as to who had written the said document and to whom it was written and as to the date on which the same was written. Likewise, documents, Ext. W-II and W-III also do not show that the workman worked for 240 days in the preceding 12 months of 10.08.2002. On perusal of the evidence on record, it is found that the workman has failed to discharge the burden of proving that he was in employment for 240 days during the preceding 12 months of the date of termination of his service and as such, he is not entitled to the protection of Section 25-F of the Act. Hence, it is ordered:—

ORDER

The action of the management of Bank of India in terminating the services of Shri Rajkumar S/o Bhadu Gajbhiye, Casual/Badli Sepoy at the Kamtha Branch of the Bank without complying with provisions of section 25-F of the I.D. Act, 1947 is justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 31 अक्टूबर, 2012

का.आ.3487.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एमजीपी/135/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/171/2002-आईआर(बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 31st October, 2012

S.O. 3487.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/135/2003) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management UCO Bank and their workman, which was received by the Central Government on 26-10-2012.

[No. L-12012/171/2002-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/135/2003 Date: 09-10-2012.

Party No. 1 : The Zonal Manager,
UCO Bank, Zonal Office, Behind Alankar
Talkies, Bhagwagar layout,
Dharampeth, Nagpur-440 010.

Versus

Party No. 2 : Shri Suresh Mangal Kanojiya,
R/o. Plot No. 48, Jeewan Chayya Nagar,
Swavlambi Nagar, Nagpur.

AWARD

(Dated: 9th October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of UCO Bank and their workman, Shri Suresh Kanojiya, for adjudication, as per letter No. L-12012/171/2002-IR (B-II) dated 17-03-2003, with the following schedule:—

"Whether the action of the management of UCO Bank through its Zonal Manager, Dharampeth, Nagpur in terminating the services of Shri Suresh S/o. Mangal Kanojiya orally from services w.e.f. 04-06-2002 is legal & justified? If not, what relief is the workman entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Suresh Kanojiya, ("the workman" in short), filed the statement of claim and the management of UCO Bank, ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that he has passed class VIII and he was employed at Swavlambi Nagar Branch of party no. 1 for the first time in May, 1997 on casual basis to fill water in coolers and to fetch water and to do cleaning work and payment was made to him by party no. 1 on weekly basis on vouchers and from May, 1997, he was employed with party no. 1 till 18-08-2001 or thereabout, with technical breaks, in order to defeat his claim of becoming a permanent workman and his name was also not entered on the rolls of the branch. The further case of the workman is that since 18-08-2001, he was treated as a daily wager by the party no. 1 and wages was being paid to him on weekly basis on vouchers and from 18-08-2001 to 04-06-2002, he worked continuously with party no. 1 on each and every day including holidays, from 8.30AM to 9.10 PM and completed

299 days of work and on 04-06-2002, his services were terminated illegally, arbitrarily and high handedly and he was paid an amount of Rs. 560 on 11-05-2002 on a voucher for the services rendered for a period of seven days from 05-05-2002 to 11-05-2002 and his wages for the period from 12-05-2002 to 04-06-2002 was not paid and his services were not regularized by the party no. 1, though he was entitled for regularisation and as he was working in both shifts of the branch, from 8AM to 4PM and from 5PM to 10PM, he used to get wages on two vouchers for the two shifts and he was getting Rs. 80 per day for working in the day shift and Rs. 40 for working in the evening shift and he was working as a sweeper and so also as a peon and he was cleaning the tables, handing over tokens to the customers and also doing other works and at present, one Kamlesh Sawarkar is working in his place on temporary basis and duties performed by him were of permanent nature and the party no. 1 engaged him intentionally on casual basis temporarily for years together, to deprive him of the status and privilege of permanent workman and there are four posts of peon in Swavlambi Branch and only two peons are working and there is no sweeper in the said branch at present and though ample work is available, party no. 1 is avoiding to continue him only to harass him. It is also pleaded by the workman that at the time of termination of his services orally, no retrenchment compensation was paid and in the preceding one year of his termination, he had completed 240 days of work and as such, the termination is nothing but victimization and colourable exercise of power by the bank and as the termination was made in contravention of the provisions of section 25-F of the Act, it is illegal, improper and bad in law.

The workman has prayed for his reinstatement in service with regularisation, back wages, seniority and all other consequential benefits.

3. In the written statement, it is pleaded by the party no. 1 *inter-alia* that the workman was not employed at Swavlambi nagar branch in May, 1997, but he was given specific work of cleaning the premises that too for 1½ hours in the morning and the same was not in the nature of employment and the workman was asked to perform the work of filling of water in the coolers, fetching of water and cleaning the premises and the payment was made on voucher indicating the purposes for which the payment was made and on occasions, between May, 1997 till August, 2001, the workman came for work and the workman was never appointed in the Bank as an employee and as he was not appointed in any capacity for the work, the question of giving any technical break does not arise at all and the workman has no right or claim, as he was not an employee of the bank, so the question of defeating the claim of the workman does not arise or survive for any consideration and there was no question of granting any status or permanency to the workman and there was also no reason for entering his name in the muster-roll and there was no

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contract for providing work to the workman or any guarantee to provide him miscellaneous work and salary of a regular employee is paid by pay slip and the workman was not entitled for the benefits or privileges of a regular employee, as he was not an employee of the Bank and there is no question of workman working on holidays as on holidays, Bank remains close and the workman never worked from 8.30 AM to 9PM and his engagement was only for 1½ hours per day and the workman did not work continuously from 18-08-2001 without any break and he also did not work for 299 days and there was no question of termination of the services of the workman w.e.f. 04-06-2002, as he was never appointed in the Bank and workman did some work for some time in May, 2002 and the workman was getting some remuneration not in the form of any wages, but for doing the specific work as mentioned in the vouchers and the workman did not work from 04-06-2002 to 11-06-2002 and there was a regular part time sweeper at Swavlambi Nagar Branch and any banking operation done by the workman was without any instructions from the bank and was done by him for his own benefit with ulterior motive and with an eye on legal remedy and the chart furnished in the statement of claim by the workman regarding the duties performed by him between 18-08-2001 to 04-06-2002 is incorrect and the provisions of section 25-F of the Act are not applicable and the workman is not entitled to any relief.

4. Apart from placing reliance on documentary evidence, both the parties have led oral evidence in support of their respective case. The workman in order to prove his case has examined himself as a witness and filed his evidence on affidavit. In his examination-in-chief, the workman has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has admitted that the bank did not issue any written appointment order to him and he was engaged on daily wages and muster is maintained in respect of permanent employee and his name was not entered in the muster register, he being a daily wager and Bank remains closed on Sundays and holidays.

5. One Shrikant Manohar Joshi has been examined as a witness on behalf of the party no. 1. His evidence is also on affidavit. In his examination-in-chief, the witness for the party no. 1 has also reiterated and facts mentioned in the written statement. However, in his cross-examination, the witness has stated that the workman was working on daily wages basis and the chart of the working days furnished by the workman is in accordance with the vouchers filed by the Bank and no written termination order was issued to the workman and he was also not paid any retrenchment compensation and the workman had worked for 299 days preceding the 12 calendar months of the date of his termination.

6. During the course of argument, it was submitted by the learned advocate for the workman that it is clear from

the oral evidence and documentary evidence on record and especially from the admission of the witness for the party no. 1 that the workman had worked for 299 days in the preceding 12 calendar months of the date of his termination i.e. 04.06.2002 and at the time of termination of the services of the workman, the mandatory provisions of section 25-F of the Act were not complied with and as such, the termination is illegal and the workman was performing permanent nature of work and also gained experience in different banking operations and the work, which the workman was performing is still available and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits including regularisation of his services.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 2012 (2) Mh. L.J. 570(SC) (H.S. Rajshekhar Vs. State Bank of Mysore), 2011 (5) Mh. L.J. 503 (SC) (Devinder Singh Vs. Municipal Council, Sanpur), 2008 (1) Supreme-256 (Hindusthan Petroleum Co. Ltd. Vs. Ashok Ambre), 2008 (3) Mh. L.J. 660 (Shyamrao Vs. State of Maharashtra), (1997) II SCC-396 (Rattan Singh Vs. Union of India), 1985 LAB IC-1325 (Chimanbhai Vs. The Manager) and 1993 I CLR-205 (Oriental Bank of Commerce Vs. Presiding Officer).

7. Per contra, it was submitted by the learned advocate for party no. 1 that the workman was never appointed against any post in the Bank and he did not work continuously and his engagement was for only 1½ hours daily, purely on casual and daily wages basis and as and when required and as the workman was not appointed to any post, there was no question of his termination from services by the Bank on 04.06.2002 and the provisions of section 25-F of the Act are not applicable to his case and the workman is not entitled for any relief. In support of such contentions, the learned advocate for the party no. 1 place reliance on the decisions reported in 1996 II CLR-826 (Allahabad Bank Vs. Shri Prem Singh), W.P. No. 5267/2008 (Smt. Nirvanda Sahadeo Zibe Vs. The Nagpur Mahila Nagrik Saharkari Bank Ltd.) and Writ Petition no. 478/2002 (Ku. Vijaya Vs. Bank of India).

So, Keeping in view the principles enunciated by the Hon'ble Apex Court and Hon'ble High Courts in the decisions cited by the learned advocates for the parties, the present case in hand is to be considered.

8. At this juncture, I think it necessary to mention here that in the decision reported in 2012 (2) Mh. L.J-570 (Supra), the Hon'ble Apex Court in the concluding paragraph of the judgment have been pleased to mention that, "This decision shall not be treated as a precedent, as the same has been rendered keeping in mind the peculiar facts and circumstances of this case." Hence, with respect, I am of the view that there is no need for consideration of the above mentioned decision while deciding the present case in hand.

9. The Hon'ble Apex Court in the decision reported in 2011(5) Mh. L.J. 503 (Supra) have held that, "the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not all relevant for deciding whether or not a person is a workman and Labour Court/Industrial Tribunal is required to consider as to whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry and once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of workman."

In this case, it is clear from the pleadings of the parties and the evidence on record that the workman was never appointed against any post in the Bank and he was engaged on casual basis on daily wages and such engagement was also not in accordance with the Rules and Regulations of recruitment applicable to the Bank. However, applying the principles enunciated by the Hon'ble Apex Court as reported in 2011 (5) Mh. L.J.-503 (Supra) to this case, it is found that the workman is a "Workman" as defined in Section 2 (S) of the Act. There is no dispute that the party no. 1 is an industry as defined in the Act.

10. So far application of the provisions of Section 25-F of the Act is concerned, it is clear from the provisions of Sections 25-F and 25-B of the Act and the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocates for the parties that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer, until the workman has been given one month's notice in writing indicating the reasons for retrenchment or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation and working for 240 days in a period of 12 months amounts to one year of continuous service.

In this case, it is clear from the evidence of the workman, the documents produced by the bank and the admission of the witness for the party no.1 that the workman worked for more than 240 days in the preceding 12 calendar months of 04.06.2002. It is also the admitted case of the parties that the mandatory provisions of Section 25-F of the Act were not complied with at the time of the termination of the services of the workman. So, the termination of the services of the workman without compliance of the mandatory provisions of Section 25-F of the Act is illegal and the same amounted to retrenchment from services.

11. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled. In this regard, I think it proper to mention about the principles enunciated by the Hon'ble Apex Court in the case, between the "In-charge officer and another versus Shankar Shetty" reported

in 2010(8) SCALE-583 which is a later decision of the Hon'ble Apex Court of the same co-ordinate bench than the decision reported in 2011 (5) Mh.L.J-503 (Supra) and is binding as per the settled judicial precedent. In the said decision, Hon'ble Apex Court have held that, "Industrial Disputes Act, 1947. Section 25F/Daily wager. Termination of service in violation of Section 25(F)/Award of monetary compensation in lieu of reinstatement/Respondent was initially engaged as daily wager by appellants in 1978. His engagement continued for about 7 years intermittently up to 06.09.85. Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure prescribed in Sec. 25(F) of the Act. Labour court rejected respondents claim: holding that Section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 06.09.85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal. Whether an order of reinstatement will automatically follow in a case where engagement of a daily wager has been brought to an end in violation of Section 25(F) of the Act-Allowing the appeal-held:

The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 year intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable".

In this case, the workman was engaged by party no.1 on daily wages basis in May 1997 and his engagement continued for about five years intermittently up to 04.06.2002, about ten years back. In view of such facts and circumstances of the case the principles enunciated by the Hon'ble Apex Court as mentioned above are squarely applicable to the present case at hand. Applying the said principles, it appears to me that a relief of reinstatement is not justified in this case and instead monetary compensation would meet the ends of justice. In my considered opinion compensation of Rs. 50,000 (Rupees fifty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence it is ordered:—

ORDER

The action of the management of UCO Bank through its Zonal Manager, Dharampeth, Nagpur in terminating the services of Shri Suresh S/o. Mangal Kanjiya orally from services w.e.f. 04.06.2002 is illegal & unjustified. The workman is entitled for monetary compensation of Rs. 50,000 in lieu of reinstatement. He is not entitled for any other relief.

The party no. 1 is directed to pay the compensation of Rs. 50,000 to the workman within one month from the date of Publication of the award in the official gazette.

J.P. CHAND, Presiding Officer

नई दिल्ली, 31 अक्टूबर, 2012

का.आ. 3488.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इंड्योरेंस कंप्लि के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/62/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-17012/29/92-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 31st October, 2012

S.O. 3488.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/62/2003) of the Central Government Industrial Tribunal/Labour Court, Nagpur, now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management National Insurance Co. Ltd. and their workmen, which was received by the Central Government on 26-10-2012.

[No. L-17012/29/92-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/62/2003 Date: 15.10.2012.

Party No. 1 : The Divisional Manager,

National Insurance Co. Ltd.,

Firdos Chambers, Wardha Road,

Ramdaspeth, Nagpur-440012.

Versus

Party No. 2 : Shri Ramdas Jethuji Telote,

Berde Layout Borgaon,

Gorewada Road, Nagpur-13

AWARD

(Dated: 15th October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in

short), the Central Government has referred the industrial dispute between the employers, in relation to the management of National Insurance Corporation Ltd. and their workman, Shri Ramdas Jethuji Telote, for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as per letter No.L-17012/29/92-IR (B-II) dated 7.12.1992, with the following schedule:-

"Whether the action of the management of National Insurance Corporation Ltd., Divisional Manager, Nagpur, relating to their branch No. 3 Sader, Nagpur in terminating the services of Shri Ramdas Jethuji Telote, causal waterman on daily wages basis w.e.f. 2.6.1987 and not considering him fit for the post of sub-staff on regular basis while recruiting fresh hands U/s 25-H of I.D. Act is legal & justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ramdas Jethuji Telote ("the workman" in short) filed the statement of claim and the management of National Insurance Corporation Ltd. ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was working on regular basis in branch No.3 of party No. 1 from the beginning of the month of September, 1985, with a monthly salary of Rs. 90 and he had completed more than 240 days of work, but party No. 1 without taking into consider the said fact, terminated his services without any notice and submitted requisition to the Employment Exchange to send the list of candidates for appointment of peon and he made an application on 03.09.1990 to consider his case for appointment as a peon, but his case was not considered and such action of party No.1 was illegal and he also submitted a reminder on 05.04.1991 to party No. 1, but his grievances were not considered and party No. 1 by their letter dated 12.02.1992 intimated the local SC/ST Association that his case would be considered, when his name would be sponsored by the Employment Exchange and party No. 1 illegally did not consider his past services and as he had completed 240 days of work, prior to the date of his termination, he is entitled for all the benefits as provided in the Act.

The workman has prayed to direct the party No. 1 to appoint him as a full time peon (sub-staff) and to pay him full back wages from the date of his termination till the date of his appointment.

3. The party No. 1 in their written statement has pleased inter-alia that the workman had worked on contact basis on daily wages of Rs. 10 U/s 2(3)(bb) of the Act and on the expiry of the stipulated period of contract, this services automatically expired and he was never engaged on monthly basis and the workman was never in their

continuous service and he had not completed 240 days of work during the period of 12 calendar months preceding the date of the alleged termination, i.e. 2.6.1987. The further case of party No. 1 is that the workman worked from 1.01.1986 to 23.07.1986 and he remained absent from work from 24.07.1986 to October, 1986 and he had never worked as a sub-staff and he did not fulfill the norms required for recruitment of the post of sub-staff and the recruitment authority is the Regional Officer at Pune and the Divisional Officer at Nagpur has no power to offer appointment or recruit the sub-staff. The further case of party No. 1 is that the workman worked for 9 days, 21 days, 11 days, 27 days, 28 days, 30 days, 23 days, 5 days, 4 days, 22 days, 2 days, 15 days, 9 days, 20 days, 22 days and one day in January, February, March, April, May, June, July, October, November and December of the year 1986 and January, February, March, April, May and June of the year, 1987 on contract basis on daily wages of Rs. 10 respectively and as such, he is not entitled to any relief.

4. In his rejoinder, the workman has pleaded that he had not worked with party No. 1 on contract or on daily wages basis and he worked as an employee on payment of monthly wages, with the assurance that he would be absorbed in the services as a sub-staff and documents were also demanded from him to absorb him as a sub-staff, but at the 11th hour, he was dropped from the list of candidates to be employed as sub-staff and some favourable candidate were given employment and he did not remain absent as claimed by the Party No. 1 and he fulfilled the norms required for appointment as a sub-staff.

5. In support of his claim, the workman has examined himself as a witness. The examination-in-chief of the workman is on affidavit. In his examination-in-chief, the workman has reiterated the facts mentioned in the statement of claim and rejoinder. However, in his cross-examination, he has admitted that he has not filed any appointment order regarding his appointment on 1.09.1985 and his affidavit is in English language and he does not know the contents of the same. The workman has further admitted in his cross-examination that he worked for 9 days in January, 1986 and a sum of Rs. 90 was paid to him on voucher and he worked for 21 days in February, 1986, 11 days in March, 1986, 27 days in April, 1986 and 28 days in May, 1986 and wages @ Rs. 10 per day was paid to him. The workman has further admitted that he worked till 23.07.1986 on daily wages basis @ Rs. 10 per day, as and when required. He has further admitted that he worked with the Party No. 1 from 27.10.1986 to 1.06.1987, as and when required basis and he worked for 5 days in October, 1986, 4 days in November, 1986, 22 days in December, 1986, 2 days in January, 1987, 15 days in February, 1987, 9 days in March, 1987, 20 days in April, 1987, 22 days in May, 1987 and 1 day in June, 1987 and Wages @ Rs. 10 per day was paid to him on vouchers. He has also admitted that he has not filed

any document to show that he was in continuous service from 01.09.1985 to 01.06.1987 with Party No. 1.

6. No oral evidence was adduced by the Party No. 1.

7. The claim of the workman is that he had worked for more than 240 days preceding the 12 calendar months of the date of his termination i.e. 2.06.1987 and as his services were terminated without any notice, he is entitled for the benefits as provided in the Act.

The Party No. 1 has denied the claim of the workman. According to the Party No. 1, the engagement of the workman was on contract basis and he had not completed 240 days of work in the preceding 12 calendar months of 02.06.1987.

8. No evidence has been adduced by the Party No. 1 to show that the workman was engaged on contract basis. Hence, the claim of the Party No. 1 in that regard cannot be entertained.

However, from the schedule of the reference, the materials placed on record and the admission of the workman in his cross-examination, it is clear that the engagement of the workman by the Party No. 1 was not on regular basis and he was engaged on daily wages basis as and when required by the Party No. 1.

9. In view of the stands taken by the parties, I think it apt to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion on the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (employees, Digawadih Colliery Vs. Their workmen) have held that:

“Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 Calendar months both the conditions are fulfilled. The definition of “Continuous Service” need not be read into Section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended Section 25-B only consolidates the provisions of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the principal Act by substituting in clause (b) the works “for every completed year of continuous service” has removed a discordance between the unamended Section 25-B and the unamended Cl. (b) of Section 25-F. No uninterrupted service is necessary, if the total Service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is

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that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

10. In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronic Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)-Continuous service-Scope of sub-sections (1) and (2) is different, (wards and phrases- Continuous Service).

Before a workman can complain of retrenchment being not consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that Section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of Section 25-B and chapter V-A".

11. The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinary Vs. Rajeev Kumar) have held that:

"Industrial Disputes Act (14 of 1947) S.25-F, 10-Retrenchment compensation-Termination of services without payment of -Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination-Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary, the affidavit of the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

12. The Hon'ble Apex Court in the decision reported in (2005) 5 SCC-100 (Reserve bank of India Vs. S. Mani) have that:

"Industrial Disputes Act, 1947-Ss.25-F, 25-N, 25-B and II-240 days' continuous Service Onus and burden of proof with respect to-Evidence sufficient to discharge-Failure of Employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden of proof on the workman discharged, merely because

employer fails to prove a defence or an alternative plea of abandonment of service-Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden-Other substantive evidence needs to be adduced to prove 240 days' continuous service-Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court of Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

13. The present case in hand is now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out, if the workman has been able to prove that he had in fact worked at least for 240 days in a year preceding his termination. According to the workman, his services were terminated on 2.06.1987. So, it is necessary for the workman to prove that in the preceding 12 calendar months of 2.06.1987, he had worked for 240 days.

On perusal of the materials on record, it is found that except his evidence on affidavit, he has not filed any valid document or has adduced any other evidence that he had worked for 240 days in the preceding 12 calendar months of 2.06.1987. He has admitted in his cross-examination about the days of his engagement from January, 1986 till 1.06.1987 and from the own admission of the workman, it is found that he had not worked for 240 days in the preceding 12 calendar months of 2.06.1987. The workman has also failed to adduce any legal evidence to show that the Party No. 1 appointed Peon on regular basis.

As the workman has failed to satisfy the eligibility qualification prescribed in Section 25-F read with section 25-B of the Act, the provisions of Section 25-F are not applicable to his case and as such, he is not entitled for any relief. Hence, it is ordered:—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 31 अक्टूबर, 2012

का.आ.3489.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 101/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/56/2011-आई आर (बी-II)]

शीश राम, अनुधाग अधिकारी

New Delhi, the 31st October, 2012

S.O. 3489.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 26-10-2012.

[No. L-12012/56/2011-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 19th October, 2012

PRESENT : A.N.JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 101/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Canara Bank and their Workman]

BETWEEN:

Sri V. Nagendran : 1st Party/Petitioner

AND

The Senior Manager : 2nd Party/Management

Canara Bank

Overseas Branch, Vela Tower

46, Azad Street, Khaderpet

Tirupur-641601

APPEARANCE:

For the 1st Party/Petitioner : M/s Balan Haridas, Advocates

For the 2nd Party/Management : M/s Sree & Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12012/56/2011-IR(B-II) dated 30.11.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Canara Bank, Tirupur in terminating the services of Sri V. Nagendran, Part-Time Employee w.e.f. 28.04.2009 is justified or not? What relief the workman is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 101/2011 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim, Counter and Reply Statement as the case may be.

3. The contentions in the Claim Statement briefly read as follows:

Petitioner with a qualification of study upto 9th standard stood engaged as Part-Time employee on 28.09.1998 on a leave vacancy. On 15.10.2003 he came into regular vacancy. On a request for his regularization on 28.10.2005 the same was communicated on 11.11.2005 to the Circle Office of the Respondent/Bank strongly recommending the request. Thereafter his employment details were sought for by the Circle Office *vide* letter dated 05.12.2007 which was furnished. While so, he was asked not to sign in the employment register by the Branch Manager and was asked to simply work and go with effect from the end of 2007. With petitioner's insistence to maintain the record he was orally terminated on 28.04.2009. Thereafter Bank engaged

M. Myilsamy, a fresher, junior to the petitioner. Petitioner had been working from 0900 AM to 0900 PM every day, doing the work of a Sub-Staff but he was termed to be a daily wager and paid monthly wages of Rs. 2,500. He had worked for more than 480 days within 24 Calendar months entitling to be made permanent as per Section-3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act, 1981. He also worked for more than 240 days within 12 calendar months. The action amounts to retrenchment. There was no compliance of Section-25F of the ID Act rendering the termination void *ab-initio*. There is also violation of Section-25H of the ID Act. Request to reinstate him being of no avail ID raised which having failed the reference is occasioned. It was alleged that the petitioner was not recruited as per the procedure. Work of petitioner is perennial in nature. His engagement was on permanent basis in the available vacancy. Petitioner has not been gainfully employed after the termination. The action is illegal, arbitrary, contrary to law in violation of ID Act provisions and principles of natural justice and it is sought to be set aside directing his reinstatement with full back wages, continuity of service and all other attendant benefits.

4. Counter Statement averments bereft of unnecessary details are as follows:

As per the existing guidelines when a regular Part-Time Employee was on leave, on his absence alternate arrangement is made. Petitioner was intermittently engaged at the Branch to do sweeping work. He had never undergone any recruitment process. He was not engaged on a regular basis in any sanctioned vacancy but was on daily wage basis intermittently on need basis. Branch Office is not empowered to recruit. Such person once engaged cannot claim absorption in regular cadre. Petitioner used to ascertain availability of work for such engagement and after May 2009, petitioner stopped arrival at the Bank. No question of oral termination arises. Petitioner's qualification is not to the knowledge of the Respondent. It is denied that he was engaged on a regular vacancy from 15.10.2003. No appointment letter was issued to him. Recruitment at Part-Time employee is done as per guidelines at Circle Level Administration. Forwarding the representation cannot be construed as commitment to absorption. It is trite that such engagement could not create right for regularization. Petitioner was engaged only as a coolie being paid daily charges. Myilsamy was not engaged as a regular Part-Time Employee. Both are akin. Section-25F is not attracted. Regularization cannot be a mode of recruitment. Section-25H is also not attracted. Respondent cannot recruit through backdoor. Decision in Uma Devi's case deprives the right to be absorbed as he is not the holder of a post. In the nature of the work, Part-Time employees are not required to work for the full working hours like other employees. It is denied that petitioner was terminated for the insistence on maintenance of the register. Respondent does not know

his present employment details. The claim is only an attempt to gain backdoor entry into regular service on false grounds. The same is only to be dismissed.

5. Reply Statement averments in a nutshell are as follows:

There are no guidelines or recruitment process in the case of Class-IV servants. Petitioner was engaged continuously and not intermittently. It is denied that the petitioner did not come for work from May 2009. To deny regularization to the petitioner Myilsamy was engaged. The rules of the Respondent will be overridden by statutory provisions. Petitioner is in grave distress now, his having lost his only source of livelihood.

6. Points for consideration are:

(i) Whether the termination of the services of Sri V. Nagendran, Part-Time employee *w.e.f.* 28.04.2009 is justified or not?

(ii) To what relief the concerned workman is entitled?

7. The evidence consists of the oral evidence of WW1 and Ex. W1 to Ex. W9 on the petitioner's side and that of MW1 and Ex.M1 and Ex.M2 on the Respondent's side.

Points (i) & (ii)

8. Heard both sides. Perused the records, documents, evidence and written arguments on either side. Both sides argued in terms of the respective contentions in their pleadings. The prominent arguments on behalf of the petitioner are that petitioner has completed 240 days during 12 calendar months and he has acquired permanent status. He has also been recommended for regularization admittedly. He had been working since 28.09.1998 evidently. As admitted by MW1 vacancy is still there for Part-Time Employee. From Ex.W1 and Ex.W2 and the testimony of MW1 it is seen that he was doing work of a continuous nature and the period of his engagement stood computed upto 9 years. Though Myilsamy is stated to be working on daily wages and not regularly, no details in respect of his wages have been produced. Hence drawing adverse inference it could be inferred that petitioner was being terminated orally engaging a fresh hand in his place. It is therefore clear that there is violation of Section-25F, 25G and 25H of the ID Act.

9. Reference was made to the decision of the Apex Court in:

— DIVISIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD. VS. A. SANKARALINGAM (2008-10-SCC-698) wherein it was "Held, a bare perusal of the two definitions reveals that their applicability is not limited to only full-time employees but requirement is that the workman claiming continuous service must fulfil the specific conditions amongst others laid down in the two provisions so as to seek the shelter of S.25-F-A workman employed on a part-time basis but under the control and supervision of an employer is a workman in terms of S.2(s) of the Act, and is entitled to claim the protection of

S.25-F - Preponderance of judicial opinion is that a workman working even on a part-time basis would be entitled to benefit on S. 25-F of the Act".

It is settled law that for attracting the applicability of Section-25G of the ID Act, it is sufficient for him to plead and prove that while effecting retrenchment the employer violated the rule of last come first go without a tangible reason. Without complying with the requirements of Section-25F(a) and (b) of the ID Act the termination amounts to retrenchment rendering the action null and void whereby the employee is entitled to continue or deemed to continue in service as if the service was not terminated. Again Uma Devi's case has no application to the facts of the case herein since under Section-30 of the ID Act employing badlis, casuals or temporaries and to continue as such for years with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item-6 of Schedule-IV. The claim is for reinstatement and other benefits and not for regularization. For violation of Section-25F of the ID Act a defence of a regularization in employment cannot be apt to be taken. Hence decision in Uma Devi's case is of no avail.

10. Under Clause-e of Ex.M1-Recruitment Norms for PTEs and Other Related Guidelines, eligibility of workman like petitioner for employment in regular vacancies is provided for. Here the question is whether the petitioner is entitled to reinstatement for violation of Section-25F of the ID Act. The question of his regularization is an alien consideration. The statutory provisions could be found to have overriding effect on service regulations which may come into conflict with such statutory provisions. Under the ID Act provisions when the rights of the petitioner are protected on fulfilment of conditions prescribed there under no service regulations can take precedence of the statutory provisions and it is for the ID Act provisions to prevail upon. When once the petitioner is shown to have worked for 240 days in 12 calendar months, he is entitled to the benefits of Section-25F of the ID Act and when there is violation of said provisions he is entitled to reinstatement with benefits or for appropriate compensation as the circumstances warrant. In the case on hand where it is proved that there is an existing vacancy the appropriate relief should be one for reinstatement with eligible benefits.

11. The contra contentions on behalf of the Respondent, that there has not been any termination and that petitioner's attempt is to get regularized, that the petitioner was abandoning the work himself, that Section-25F and Section-25H are not applicable, that the petitioner is not entitled to claim the post as a matter of right, that he has no right to be absorbed in service and that he is not a holder of the post are not valid defences for violation of Section-25F of the ID Act in the wake of which the petitioner shall be entitled to reinstatement or for compensation as may be appropriate. But the same may be valid defences in

a claim for regularization into service, which is not the case here.

12. Reliance was also placed on behalf of the Respondent to the decision of the Apex Court in

— SATYA PRAKASH AND OTHERS VS. STATE OF BIHAR AND OTHERS (2010-II-LLJ-665) wherein it is held that "Persons not appointed against sanctioned posts and not following due process of selection, held, not entitled to regularization of service".

SECRETARY, STATE OF KARNATAKA AND OTHERS VS. UMADEVI(3) AND OTHERS (2006-4-SCC-1) together with the above decision has no application for reasons discussed supra and evidently for the reasons that they relate to regularization of casual employees whereas the present question is regarding reinstatement or other benefits for violation of Section-25F of the ID Act.

13. The termination of the service of the petitioner is therefore set aside and he is ordered to be reinstated into service forthwith without back wages but with continuity of service and all other attendant benefits.

14. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 19th October, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri Nagendran

For the 2nd Party/ : MW1, Sri R. Viswanathan Management

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	28.09.1998 to 07.07.2007	Details of number of days worked by the petitioner and the wages paid to the petitioner
Ex.W2	02.01.2003 to 28.04.2009	Statement of Account — Petitioner's Savings Bank Account
Ex.W3	11.11.2005	Recommendation letter issued by the Chief Manager
Ex.W4	28.10.2005	Letter sent by petitioner
Ex.W5	07.11.2007	Letter from Chief Manager
Ex.W6	05.12.2007	Details of petitioner
Ex.W7	05.12.2007	Letter to Respondent/Bank
Ex.W8	15.05.2009	Representation of the petitioner with acknowledgement cards

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Ex W9 29.11.2010 Letter to Assistant Commissioner of Labour (Central) by the Senior Manager of the Respondent/Bank

Documents Marked:

On the Management's side

Ex. No. Date Description

Ex. M1 23.12.1995 Letter annexed with copy of Recruitment Norms for PTE

Ex. M2 - Norms regarding upward movement of Part-Time Employees in Scale Wages

नई दिल्ली, 31 अक्टूबर, 2012

का.आ. 3490.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार मैं केन्द्रीय सरकार मैसर्स मैगनीज और इंडिया लिमिटेड नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 14/2003)को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-29012/31/2002-आई आर (एम)]

जौहन तोपनो, अवर सचिव

New Delhi, the 31st October, 2012

S.O. 3490.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2003) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management M/s. Manganese Ore India Ltd, Nagpur and their workman, which was received by the Central Government on 26-10-2012.

[No. L-29012/31/2002-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/14/2003 Date : 24.09.2012

Party No.1 : The General Manager (P),
M.O. (I). Ltd., 3 Mount Sadar,
Nagpur (MS)- 440001

Versus

Party No. 2 : The Secretary,
Rashtriya Manganese Mazdoor
Sangh, (INTUC), Bansi Villa
Compound, Katol Road,
Nagpur-440013.

AWARD

(Dated : 24th September, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of MOIL and their workman, Shri V.S. Waikar, for adjudication, as per letter No. L-29012/31/2002-IR(M) dated 13.11.2002, with the following schedule:-

"Whether the action of the management of the General Manager, Manganese Ore India Ltd., 3, Mount Road Extension, Sadar, Nagpur in terminating the services of Sh. V.S. Waikar, Ex. Sr. O.S. w.e.f. 28-05-2001 without waiting the decision of the trial special court where the departmental proceeding and the criminal case are based on the same set of facts and the evidence in the proceedings is common was legal, proper and justified? If not, what relief is the said workman is entitled and from what date?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri V.S. Waikar, ("the workman" in short) through his union, "Rashtriya Manganese Mazdoor Sangh (INTUC)," ("the union" in short) filed the statement of claim and the management of M.O.I.L, ("party no. 1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that the workman was an employee of party no. 1 and he was working in the personal department and he had unblemished service record for about 27 years and the service conditions of the workman were governed by the Standing Orders framed in the year 1996 by the party no. 1 and Certified Standing Orders and so also Manganese Ore (I) Ltd., employees (Disciplinary) Rules 1978 and by order dated 09.03.1998, the General Manager (Personnel), suspended the workman on the ground of pending investigation of a criminal case against him in terms of clause 29 (h) (i) of the Certified Standing Orders and the appointing authority of the workman as per the service conditions was the Board and it was the Chairman-cum-Managing Director and no authority below that was the appointing authority of the workman and the General Manager (Personnel), or for that matter, the General Manager (Technical) were not the competent authorities to initiate the disciplinary action and by communication dated 23.04.1999, the order of suspension against the

workman was revoked by the General Manager (Personnel) and an order was passed for the reinstatement of the workman in service and the reinstatement was ordered till the trial was over, which was pending with the Central Bureau of Investigation and in view of such order, there was no authority, power and jurisdiction with the party no. 1 to dismiss the workman from services, as because, even as on the date of dismissal, the criminal proceeding before the court of competent jurisdiction was pending. The further case of the union as presented in the statement of claim is that as per the provisions of the Standing Orders, the suspension should allow the issuance of charge sheet within a period of 7 days and in this case, the charge sheet was issued on 02.06.2000, in contravention of Standing Order 31 (b) of 1996 and the General Manager (Technical), not being the appointing authority or disciplinary authority, submitted the charge sheet against the workman and the submission of the charge sheet is wholly illegal and without jurisdiction and the charge sheet so issued and the enquiry made thereunder is void ab-initio and without any jurisdiction and liable to be struck down as illegal and ultra virus. It is also claimed by the union that on receipt of the charge sheet, the workman submitted his reply on 26.08.2000 and denied the charges levelled against him and the allegations made in the charge sheet did not come under the definition of misconduct as per the Standing Orders and the allegations were false and as the allegations did not amount to any misconduct, the party no. 1 had no power or jurisdiction to initiate the departmental proceeding against the workman and during the entire enquiry proceedings, original documents were not produced and in absence of the production of the original documents, the imposition of the punishment of dismissal is illegal and unsustainable and one Shri S.B. Katiyar was appointed as the enquiry officer to enquire into the charges against the workman by order dated 13.07.2000, by the General Manager (Technical), though he did not have the power, authority or jurisdiction to appoint the enquiry officer and party no. 1 appointed Shri L.M. Telang as the presenting officer and he was well versed in the art and skill in the matter of departmental proceedings and was conversant with the legal procedure in relation to the departmental enquiries and the workman did not possess any legal knowledge and was not conversant with the Rules and Regulations and as such, the workman should have been apprised of his rights in the matter of his representation in the departmental enquiry and the workman should have been allowed to be represented by a legal practitioner and though the enquiry officer had agreed for appointment of a representative by the workman of his choice, subsequently the same was declined by the enquiry officer and the enquiry officer granted permission to the workman to bring an outsider to help him in the enquiry and the Standing Orders permit an employee to get assistance of the office bearers of the recognized trade union, of which he is a member and as such, the restriction imposed by the enquiry officer was

violative of the principles of natural justice and the provisions of the Standing Orders and in these circumstances, the workman was constrained to have the assistance one Shri Dominic Joesph, who was an employee of Manganese Ore and the procedure followed by the enquiry officer in the enquiry was not in conformity with the established procedure of holding departmental enquiries and the statements recorded were not in the question and answer form and the enquiry officer was guided by the presenting officer and the defence assistant of the workman was not a match to the presenting officer and during the course of enquiry, *vide* application dated 01.11.2000, the defence assistant asked for the preliminary enquiry papers and though agreed, the copies of the preliminary enquiry proceedings were not supplied and during the cross-examination of witness, Shri Venugopal, certain documents were felt necessary to establish the case of the workman, but supply of such documents was denied by the enquiry officer and the enquiry officer failed to direct the presenting officer to make available the desired documents.

The Union has also pleaded that the criminal proceedings as well as the departmental enquiry were based upon the same set of facts and documents and it was not within the competency of the management to hold the departmental enquiry, without there being any legal admissible material on record and the workman being prejudiced filed the writ petition bearing no. 4108/2000 before the Hon'ble High Court and the Hon'ble High Court by order dated 17.01.2001 though refused to stay the departmental proceedings, directed the party no. 1 to give fair opportunity to the workman by permitting him to recall the witnesses examined in the enquiry for cross-examination and accordingly, a demand was made for permission to cross-examine Shri Sharma, *vide* communication dated 01.02.2001 and the same was duly acknowledged by the enquiry officer and inspite of the direction of the Hon'ble High Court, the opportunity to cross-examine Shri Sharma was denied and there was a patent violation of principles of natural justice and during the enquiry, the enquiry officer almost prejudged the entire issue and failed to act impartially and did not allow relevant questions and failed to supply the demanded documents and the workman raised objection regarding the attitude and approach of the presenting officer, which was impermissible in law but to no effect and in this background, communication dated 17/19.04.2001 was issued by the General Manager (Technical), forwarding the alleged report of the enquiry officer and calling upon the workman to show cause against the proposed penalty of dismissal and as the show cause notice was not issued by the appointing authority, it was wholly illegal and without jurisdiction and the findings purported to have been recorded by the enquiry officer are perverse and unwarranted and the same are also unjustified and not supported by material on record and during the course of enquiry, material witness Shri Kishore Thakur was not

examined and the same was a fatal flaw in the enquiry and the workman submitted his representation to the show cause notice and inspite of submission of satisfactory explanation, the General Manager (Technical), by communication dated 25.05.2001 dismissed the workman from services and such order was served upon the workman on 28.05.2001 and the General Manager (Technical) had no authority, power and jurisdiction to dismiss the workman and the appeal preferred by the workman dated 21.06.2001 was rejected by the Director (Production and Planning) without application of mind and the Director (Production and Planning) is an authority subordinate in rank and status to the appointing authority and cannot be the appellate authority, so the rejection of the appeal of the workman is in violation of the provisions of the Act, Standing Orders and principles of natural justice and the imposition of punishment of dismissal is neither just, fair nor proper and the same is shockingly disproportionate. The union has prayed to quash and set aside the order of dismissal passed against the workman and for his reinstatement in service with continuity and all back wages.

3. The party no. 1 in its written statement has pleaded *inter-alia* that the disciplinary enquiry conducted against the workman is just, fair and proper and it is a Government of India undertaking and carrying the activity of mining in Manganese ore and the service conditions of its workmen are governed by various set of Rules, Standing Orders etc. and there are separate Standing Orders applicable to its workmen employed in mines and at head office and the Standing Orders applicable to the workmen employed at head office were Certified by Dy. Commissioner of Labour, Nagpur on 07.03.1983, whereas, the Standing Orders for workmen working at mines/establishments/projects were Certified by RLC(c), Nagpur on 10.10.1996 and the Standing Orders Certified by RLC were made applicable to the workmen at head office, by office order dated 05.03.2001 and the workman was employed at head office and the disciplinary proceedings initiated against him commenced on 02.06.2000 and ended on 17.02.2001 and as such, the said disciplinary proceedings was initiated under old Standing Orders. The further case of the party no. 1 is that the workman while functioning as Senior Office Superintendent (P&A) at head office Nagpur, during the period from January, 1998 to March, 1998, unauthorisedly communicated certain official information relating to the appointment of Shri Bhupesh Gautam as Junior Superintendent (System), through an outsider, Shri Kishore Thakur and the workman posted the original appointment letter of Shri Bupesh Gautam with incomplete address, with intention of gaining time for intervening into a criminal conspiracy for obtaining illegal gratification and the workman gave a copy of the said appointment letter to Shri Kishore Thakur for obtaining illegal gratification and the workman misused his official status and accepted bribe of Rs. 10000 at the hand of Shri Kishore Thakur at his

residence in the presence of Shri B.C. Gautam on 04.03.1998 and a trap was arranged on 03.03.1998 by CBI, Nagpur, on the complaint of Shri B.C. Gautam and Shri Thakur was caught red handed by CBI, Nagpur for demanding and accepting bribe of Rs. 10000 from Shri Gautam and during interrogation by CBI, Shri Thakur admitted that the workman had given the appointment letter of Shri Gautam and that he was to handover the money to the workman and a second trap was laid by the CBI at the residence of the workman on 04.03.1998 and the workman was caught red handed, while accepting money from Shri Thakur in presence of Shri Gautam and the workman after accepting the money from Shri Thakur, instructed Shri Gautam to give the remaining amount of Rs. 10000 and the workman was arrested and taken into custody by CBI and the above act amount to major misconduct under the Standing Orders applicable to the workman, so a charge sheet was issued against him on 02.06.2000 under clause 29 (ii) (a) of the Standing Orders and alongwith the charge sheet, list of documents and list of witnesses were supplied to the workman and finding the show cause submitted by the workman not to be satisfactory, it decided to initiate the disciplinary enquiry and the disciplinary authority, the General Manager (Technical) appointed the enquiry officer and the presenting officer *vide* order dated 13.07.2000 and sitting of the enquiry was given by the enquiry officer to the workman and after giving the workman a reasonable opportunity of hearing to put his case, he was allowed to take help of the representatives as permissible under the Standing Orders and the workman sought permission to bring an outsider as defence assistant and permission was granted and the workman submitted the name of Shri Joseph and the management examined witnesses to prove the alleged misconduct and the workman was given opportunity to cross-examine the witnesses, but he did not co-operate and on the dates of examination of the witnesses, he refused to cross-examine the witnesses and on completion of evidence from the side of the management, the enquiry officer asked the workman to produce his defence, but the workman refused to adduce any evidence and the enquiry officer asked the parties to submit their comments on or before 23.02.2001 and the workman did not submit any comment and the enquiry officer submitted his report on 27.03.2001, holding the workman guilty of the charges levelled against him and the disciplinary authority by memorandum dated 17/19.04.2001 sent the copy of the enquiry report and asked the workman to submit his representation to the proposed penalty of dismissal from service, since the misconduct was a major misconduct under clause 27-B and the workman submitted his reply by letter dated 14.05.2001 and the disciplinary authority having found the reply of the workman not to be satisfactory, by a speaking order dated 25.05.2001, imposed the punishment of dismissal from service of company with disqualification for future employment and the workman preferred an appeal against the order of dismissal and the appellate authority

after considering the various objections raised in the appeal, by a reasoned order dated 01.10.2001, rejected the appeal and the enquiry conducted was just, fair and proper and the workman was given reasonable opportunity to defend his case and he was guilty of not availing the same and the enquiry was conducted in accordance with the standing orders and Rules applicable to the workman and the acts of misconducts leveled against the workman having been proved, penalty imposed is proportionate to the misconduct and the dispute raised by the union has no merit and needs to be answered in negative. The further case of the party no. 1 is that there is valid delegation of power to the General Manager (Personnel), and the General Manager (Technical), to initiate disciplinary action and they are competent authorities to initiate disciplinary action and there is valid delegation of power to the aforesaid authorities and the charge sheet issued against the workman was in accordance with the standing orders and after revoking suspension order, the workman was transferred to technical department as laid down in annexure-A to the office order C & D Rules/95-96/343 dated 11.08.1995 and the heads of department under whom the workman worked have power to initiate disciplinary proceedings and therefore the General Manager (Technical) was perfectly justified in issuing the charge sheet and it is wrong to say that the charges leveled against the workman are not defined in the standing orders and the acts of misconducts mentioned in the charge sheet are those given in the standing orders in force at the relevant time and the appointment of the Presenting Officer was as per Rules and representation of workman by legal practitioner is not permissible, either under standing orders or the disciplinary rules and the workman even though was permitted to take assistance of an outsider, he failed to do so, for the reasons best known to him and as such, he cannot be permitted to raise the grievance of denial of opportunity to have defence assistance of his choice and the enquiry was conducted strictly in accordance with the standing orders in force and there is no bar for conducting departmental enquiry when criminal proceeding is pending and the order passed by the Hon'ble High Court, while dismissing the petition filed by the workman makes this position further clear and the workman was informed that the witness, Shri Sharma, Dy. S.P. CBI, who was posted at that time at Silchar could be recalled, provided he should bear his cost and this was required to be done, since the workman avoided to cross-examine Shri Sharma on the date his examination-in-chief was recorded on untenable ground and Shri Sharma was detained for one day at the behest of the defence to enable the workman to cross-examine him and the workman declined to take the responsibility to call Shri Sharma and as the workman stayed away from the proceedings, the enquiry officer closed the enquiry and the enquiry officer gave fair opportunity to the workman to defend himself and it was the workman, who tried to prolong

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the enquiry by filing various unmeritorious applications and disciplinary authority after considering the report submitted by the enquiry officer on 27.03.2001, issued a memorandum alongwith the copy of the enquiry report to the workman and the charges levelled against the workman were of serious in nature and constituted major misconduct, therefore, imposing of major penalty of dismissal is justified and the punishment imposed commensurate with the acts of misconduct and the same is not shockingly disproportionate and the workman is not entitled for any relief.

4. As this is a case of termination of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 18.06.2012, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. It is necessary to mention here that since 10.01.2008 neither the petitioner nor anybody else appeared on his behalf in the case and in spite of giving number of opportunities, no evidence was adduced by the petitioner in support the claim. Hence, as per orders dated 14.07.2011, evidence from the side of the petitioner was closed.

6. Evidence of witness Nitin Yeshwant Pagnis was filed on affidavit from the side of the management. The evidence of the witness from the side of the management remained unchallenged, as none appeared on behalf of the petitioner to cross-examine him.

7. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. In this case the petitioner has not adduced any legal evidence to show that there was any illegality in conducting the departmental enquiry against the workman. Moreover, on perusal of the materials on record, commission of grave misconduct has been proved against the workman in a properly conducted departmental enquiry and the findings of the enquiry officer are not perverse. Hence, the punishment imposed against the workman cannot be said to be disproportionate to the grave misconduct proved against him. Hence, it is ordered:—

ORDER

The action of the management of the General Manager, Manganese Ore India Ltd., 3, Mount Road Extension, Sadar, Nagpur in terminating the services of Sh. V.S. Waikar, Ex. Sr. O.S. w.e.f. 28-05-2001 without waiting for the decision of the trial special court was legal, proper and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 31 अक्टूबर, 2012

का.आ.3491.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आंयल एंड नैसुल गैस कारपोरेशन लिमिटेड अंकलेश्वर के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 60/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/10/2012 को प्राप्त हुआ था।

[सं. एल-30011/82/2006-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 31st October, 2012

S.O. 3491.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 60/2007) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Oil & Natural Gas Corporation Ltd (Ankleshwar) and their workman, which was received by the Central Government on 26.10.2012

[No. L-30011/82/2006-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present.....

Binay Kumar Sinha,
Presiding Officer,
CGIT cum Labour Court,
Ahmedabad, Dated 05.09.2012

Reference: CGITA of 60/2007

1. The General Manager (IR),
ONGC Ltd., Ankleshwar Project,
(Gujarat).
2. The Head Forward Basin,
Forward Basin, ONGC Ltd.,
Kansari.
3. M/s. Adarsh Electric Works,
Pith Bazar, Lal Darwaja Road,
Cambay-388620

.....First Party

And their workman

Shri Jayantibhai Arjunbhai Chauhan
Through Working President,
Petroleum Mazdoor Sangh,
Shram Sadhna, Opp. Police Ground,
Raopura, Vododara, (Gujarat).Second Party

For the first party : Shri K.V. Gadhia, Advocate]
Shri M.K. Patel, Advocate

For the second Party : None

AWARD

The Appropriate Government/Government of India, Ministry of Labour, New Delhi considering an Industrial Dispute existing between the employers in relation to the management of ONGC Ltd. Cambay and their workman, in exercise of the power conferred by clause (d) of sub section (1) and sub section 2 (A) of Section (10) of the ID Act, 1947 by its order No. L-30011/82/2006 [IR(M)] dated 10.05.2007, referred the dispute for adjudication to this tribunal formulating the terms of reference as follows:—

SCHEDULE

"Whether the action of M/s Adarsh Electric Works, Contractor of ONGC Ltd., Cambay in terminating the services of Sh. Jayantibhai Arjunbhai Chauhan w.e.f. 27/07/2005 is legal, proper and just? If not, to what relief the concerned workman is entitled to?"

- 2) After registering of the case the notices to the parties were issued for filing statement of claim and written statement. In response to notices first party management of ONGC appeared through lawyer executing power in favour of Shri K.V. Gadhia and M.K. Patel for making proper pairvy in this case on behalf of the first party, but in spite of several notices including reminder notices to the second party workman/union they neither appear nor file statement of claim, in spite of several opportunities given for the same. In the meantime as many as about 2 dozen adjournments were given to the second party for filing of statement of claim and lastly by order dated 08.08.2012 last chance was given for filing statement of claim but till today the second party failed to appear and file statement of claim whereas the lawyer of the first party was moving on each dates for passing necessary order.
- 3) It appears that both the concerned workman Shri Jayantibhai Arjunbhai Chauhan and his union Petroleum Mazdoor Sangh have lost interest in this reference case. So it is not desirable to keep this reference case pending unnecessary for filing of the statement of claim. In the circumstances the following order is passed.

ORDER

This reference is dismissed for non-prosecution by the second party workman.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 1 नवम्बर, 2012

का.आ.3492.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडिया ऑयल कारपोरेशन टिकरी कला दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2 दिल्ली के पंचाट (संदर्भ संख्या 49/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 30-10-2012 को प्राप्त हुआ था।

[सं. एल-30011/7/2009-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 1st November, 2012

S.O. 3492.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2009) of the Central Government Industrial Tribunal/Labour Court No.2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. IOCL, Tikri Kalan (Delhi) and their workman, which was received by the Central Government on 30-10-2012

[No. L-30011/7/2009-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE COURT OF SHRI SATNAM SINGH,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
ROOM NO. 33, BLOCK-A, GROUND FLOOR,
KARKARDOOMA COURT COMPLEX.
KARKARDOOMA, DELHI-110032

ID No. 49/09

In the matter between:

The President
Bhartiya Shramjivi Sangh (Regd),
Chamber No. 240, Western Wing, Lawyers Chambers,
Tis Hazari, New Delhi- 110054.

.... Workman

Versus

1. The Manager,
IOCL, Tikri Kalan Plant,
Ghevra More, Tikri Kalan,
New Delhi- 110041

.....Management

AWARD

The Central Government, Ministry of Labour vide Order No. L-30011/7/2009-IR (M) Dated, 27.07.2009 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the demand of the Bhartiya Shramjivi Sangh for payment of bonus @ 8.33% as per the Payment of Bonus Act to the workmen working in the establishment as Capman, Soapman, Sealman etc. is legal and justified? What relief the workmen concerned are entitled to?"

2. The workman filed his statement of claim. Written statement was filed by the management. Rejoinder was also filed by the workman on 12.05.2011. However, none has appeared from the side of the workman since 05.07.2011. It is evident that the workman is no longer interested in the outcome of this reference. In these circumstances, there is no way out except to pass a no dispute award in this case, which is passed accordingly, The reference sent by the Central Government stands disposed of accordingly.

Dated: 07.09.2012

SATNAM SINGH, Presiding Officer

नई दिल्ली, 1 नवम्बर, 2012

का.आ.3493.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्टील अथारिटी ऑफ इंडिया पनकी, कानपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 40/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 30-10-2012 को प्राप्त हुआ था।

[सं. एल-29012/5/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 1st November, 2012

S.O. 3493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 40/2012) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Steel Authority of India Ltd. Panki,

Kanpur and their workman, which was received by the Central Government on 30.10.2012

[No. L-29012/5/2012-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR.

Industrial Dispute No.40 of 2012

Between

Suresh Prasad pandey,
Son Late Rajdhari Pandey,
EWS-98, Gangaganj Colony,
Panki, Kanpur.

And

The Warehouse Manager,
Steel Authority of India Limited,
Panki,
Kanpur.

AWARD

- Central Government, MoL, New Delhi vide notifications No.L-29012/05/2012 IRM dated 04.06.12 has referred the following dispute for adjudication to this tribunal.
- Whether the action of the management of Shivam Steels Ghaziabad a contractor of Steel Authority of India Limited in terminating the services of workman Sri Suresh Prasad Pandey son of Late Rajdhari Pandey, with effect from 28.07.11 is legal and justified? What relief the workman is entitled to?
- The instant case was taken up for hearing on 05.09.12 when the applicant himself has moved an application to the effect that he does not want to press the claim pending before the tribunal.
- Considering the request of the claimant, the tribunal has been left with no other option but to decide the reference against the workman and in favour of the management.
- Reference is answered accordingly against the workman and in favour of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 1 नवम्बर, 2012

का.आ. 3494.—औधोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 कि अनुसरण में केन्द्रीय सरकार मैसर्स केन्द्रीय भांडागार निगम बैंगलूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके

कर्मकारों के बीच अनुबंध में निर्दिष्ट औधोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बैंगलूर के पंचाट (संदर्भ संख्या 90/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 30. 10.2012 को प्राप्त हुआ था।

[सं.एल-42011/1/2007-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 1st November, 2012

S.O. 3494.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 90/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Central Warehousing Corporation (Bangalore) and their workman, which was received by the Central Government on 30.10.2012.

[No. L-42011/1/2007-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"Shram Sadan",
G.G.Palya, Tumkur Road,
Yeshwantpur Bangalore-560022.

DATED : 5th September, 2012

PRESENT : Shri S.N.NAVALGUND, Presiding Officer
C.R. No. 90/2007

I Party

The General Secretary,
C W C Employees Union (BR),
Regional Office, No.9,
Mission Rd.,
Bangalore-560 027

II Party

The Regional Manager,
Central Warehousing
Corporation Regional
Office, No.9, Mission Rd.,
Bangalore-560 027

Appearances

I Party : Shri K. Govindaraj, Advocate

II party : Sh. K. Giridhar, Advocate

AWARD

- The Central Government by exercising the powers conferred by Clause (d) of sub-section (1) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947

has referred this dispute vide Order No. L-42011/1/2007-IR(M) dated 09.07.20007 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the management of Central Warehousing Corporation in denying payment of CCA at B-2 city rate from 1/1/1997 to 31/3/2004 to the employees of the Corporation, who were posted/working at Belgaum and Mangalore is legal and justified ? If not, to what relief the workmen are entitled?"

2. Consequent to receipt of the reference pursuant to the notices issued by this tribunal the General Secretary, CWC Employees Union and the Management of Central Warehousing Corporation entered their appearances through their respective advocates and filed the claim statement and counter statement respectively.

3. It is claimed in the claim statement the Central Warehousing Corporation (herein after referred as II Party) established by the Central Government has warehouses at Mangalore as well as Belgaum Cities and that its Workmen and governed by the terms and conditions of the services of the employees of the Central Warehousing Corporation Staff Regulation 1986. The Central Government notified the list of cities and rates for the purpose of extending and fixing HRA and CCA and as per the notification issued by the Central Government dated 14.05.1993. Mangalore and Belgaum cities were categorized as B-2 cities but however in the subsequent notification dated 03.10.1997 it excluded Mangalore and Belgaum cities from the list of B-2 cities but by clause 3 of the said O.M. cities/towns placed in a lower classification were allowed to draw HRA/CCA as per the existing classification until further orders and thus it protected the interest of the workmen working at Mangalore and Belgaum cities as far as HRA and CCA is concerned but the said benefit of protection was not given to the workmen of the category of C and D of the II party establishment working at Mangalore and Belgaum cities and thereby denied the benefit of CCA at B-2 rate from 01.01.1997 to 31.03.2004 and as w.e.f. 01.04.1994 when the revised CCA came to be implemented wherein again Mangalore and Belgaum cities were brought under B-2 list the CCA has been given accordingly, but inspite of several requests the management since did not care to release the CCA to the workmen working at Mangalore and Belgaum cities of the period 01.01.1997 to 31.03.2004, the union

raised the dispute before ALC(C) and as the II party did not come forward to agree for payment of the CCA for the above said period, it ended in failure and resulted in this reference. With these averments in the claim statement the I party union pray to pass an award directing the II party to extend the benefit of CCA to the workman in Category C and D working at Mangalore and Belgaum cities at B-2 city rates from 01.01.1997 to 31.03.2004 with compensation of Rs.1,000.00 to each workman.

4. In the counter statement filed by the II party it is contended the classification of cities and rates of HRA and CCA to be paid to the officers of CWC on CDA scales on the basis of the instructions issued by the department of expenditure, MOF, New Delhi or specifically for CDA pattern officers by DPE. The classification of cities and rates of HRA/CCA are regulated to the employees of Corporation on IDA scales on the basis of O.M. issued by the DPE and as the list of classification of cities for the payment of HRA and CCA to the CDA pattern staff was different as per 5th CPC this list was sent to the payment of HRA and CCA in IDA scales revised w.e.f. 01.01.1997 vide DPE O.M. dated 25.06.1999. It is further contended as per MOD/MOS signed during the 4th Wage revision the amount of HRA and CCA on the revised scale of pay was payable w.e.f 01.01.2002 as notified by the Government of India from time to time the version of MOD/MOS has been strictly followed. It is further contended that the DPE issued O.M. dated 02.05.2001 clarifying that the PSUs employees would be allowed CCA on the revised basic pay where CCA rates are lower than the earlier rates as per new classification of cities based on population till further orders from the Government and it was meant for Board level, non-board level and non-union supervisory cadres of PSU and not for Unionized cadres and it was not incorporated in the MOD/MOS while the other OM dated 22.01.2001 for regulating the payment of HRA at the earlier rate for the employees on the revised pay to the employees on IDA scale where HRA rates are lower than the earlier rates as per new classification of cities was incorporated in MOD/MOS. It is further contended on the basis of 2001 census DPE having issued O.M. again upgrading Mangalore and Belgaum cities from C to B-2 cities w.e.f. 01.04.2004 same has been implemented. Thus it is contended the claim of CCA for the C and D class employees working at Belgaum and Mangalore cities at the B-2 rate for the period from 01.01.1997 to 31.03.2004 is unjustified and is liable to be rejected.

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5. After completion of the pleadings when the parties were called upon to adduce the evidence on behalf of the II party while filing the affidavit of Sh. N. Swaminathan, Assistant Manager (Administration and Establishment) examining him on oath as MW 1 got exhibited the copy of the DPE/Guidelines/IV/(c)/8 classification of cities/towns basis of population of grant of HRA and CCA to Central Government employees dated 18.11.2004, as Ex M-11DPE O.M.No. 2(21)/E.II.(B)/2004 dated 18th November, 2004. Inter alia, the learned advocate appearing for the I party while filing the affidavit of the General Secretary of the I party Union, examining him on oath as WW 1 got marked True copy of the Staff Regulation, i.e., Notification dated 28.02.1986; true copy of list of classified status for CCA under O.M. dated 14.05.1993 Copy of List of classified cities for CCA under O.M. dated 03.10.1997; Copy of the O.M. dated 16.03.2005; true copy of the letter dated 03.10.2006; letter dated 28.04.2006; DPE O.M. dated 24.10.1997; copy of notification dated 30.09.1997; Copy of O.M. dated 03.10.1997 and Copy of circular dated 19.08.2008 as Ex W-1 to Ex W-10 respectively.

6. The learned advocate appearing for the II party during the course of cross examination of WW 1 produced DPE guidelines (O.M. No. 2949)/98-DPE(WC) dated 25.06.1999 said to have been taken from the internet and got it marked as Ex M-2.

7. With the above pleadings, oral and documentary evidence brought on record when the learned advocates appearing for parties were called upon to address their arguments, the learned advocate appearing for the II party submitted that admittedly in the list of classified cities for the CCA under O.M. dated 03.10.1997 the Belgaum and Mangalore cities were taken out from B-2 cities list and the said list governed the payment of CCA for the period in question i.e. 01.01.1997 to 31.03.2004, the C and D employees of the II party establishment were not entitle for CCA for that particular period and thus urged to reject the Reference. Inter alia, the learned advocate appearing for the I party urged that in the OM dated 03.10.1997 though Mangalore and Belgaum cities were taken out of B-2 list, by clause 3 of the said OM the protection being given to the cities/towns which have been placed in a lower classification as compared to the existing classification further directing to continue to retain until further orders and same being not revoked or any further orders were made the II party is liable to pay the CCA to C and D employees working at Belgaum and Mangalore at B-2 rates for the period 01.01.1997 to 31.03.2004.

8. MW 1 in his affidavit evidence just states that the payment of CCA to the workman depends upon the DPE guidelines and their Official Memorandum and as the city of Belgaum and Mangalore has been upgraded to B-2 class cities w.e.f. 01.04.2004 as per the notification dated 18.11.2004 the workmen of the I party who were working in both those cities before 31.03.2004 were not entitle for CCA as those cities were classified as C class and that the said workmen employed in C class cities are getting pay scales under IDA and they are entitled for hardship allowance only. In his entire affidavit he has not stated anything about the protection clause in the O.M. dated 03.10.1997. When OM dated 03.10.1997 takes out Belgaum and Mangalore cities from B-2 class cities with a protection clause which reads as :

"The Cities which have been placed in a lower classification, in the above mentioned list, as compared to their existing classification, shall continue to retain the existing classification until further orders and Central Government employees working therein will be entitled to draw the rates of CCA accordingly".

in the absence of any further order or revocation of this protection clause the II party was required to continue to retain the existing classification admittedly wherein these two cities in question were in B-2 list. The learned advocate appearing for the II party while making a suggestion to WW 1 that there is further order dated 25.06.1999 to clause 3 of OM dated 03.10.1997, though he denied, got exhibited DPE guidelines Ex M-2 said to have been taken from internet, but no where in the said document there is a reference either to withdrawal of protection clause or making any order contrary to that protection clause. Therefore, absolutely there was no reason for the II party to deny CCA to its C and D class employees working at Mangalore and Belgaum cities at the rate of B-2 class cities as per the existing classification before issue of that O.M. No. 2(30)/97-E.II(B) dated 03.10.1997. Under the circumstances, I am of the considered view the action of the management of CWC in denying payment of CCA in B-2 city rates to its C and D class employees working at Mangalore and Belgaum from 01.01.1997 to 31.03.2004 is not legal and there is no justification, as such, they are entitle for CCA at B-2 city rates for the said period. As far as the claim regarding compensation of Rs. 1,000.00 to each workman there is no basis but in spite of the justified demand the same being denied/withheld it is just and proper to direct the II party to pay interest on the total amount payable to each workman @ 6% p.a. from the date of reference till actual payment. In the result, I pass the following:—

ORDER

The reference is Allowed holding that the action of the management of Central Warehousing Corporation in denying payment of CCA at B-2 city rate from 1-1-1997 to 31-3-2004 to the employees of the Corporation is not legal and justified and their workmen working at Belgaum and Mangalore cities during 01-01-1997 to 31-03-2004 shall be paid CCA at B-2 city rate with interest @ 6% p.a. from the date of reference (09-07-2007) till date of actual payment. No order as to cost.

(Dictated to U.D.C. transcribed by him, corrected and signed by me on 5th September 2012).

S.N. NAVALGUND, Presiding Officer

ANNEXURE-I**List of Witnesses:**

MW 1- Sh. N. Swaminathan, Assistant Manager (Admn. & Estt.)

WW 1- Sh. Mashkoor Mahiyuddin, Personal Assistant, CWC, Regional Office, Bangalore

Documents exhibited on behalf of the management:

Ex M-1- Copy of the DPE guidelines, DPE O.M. No. 2(21)/EI(B)/2004 dated 18th Nov. 2004

Ex M-2- DPE guidelines [O.M. No. 2949]/98-DPE(WC) Dated 25-06-1999]

Documents exhibited on behalf of the I party:

Ex W-1- True copy of the Staff Regulation, i.e., Notification dated 28-02-1986.

Ex W-2- True copy of list of Classified status for CCA under O.M. dated 14-05-1993.

Ex W-3- List of classified Cities for CCA under O.M. dated 03-10-1997 (Copy).

Ex W-4- Copy of the O.M. dated 16-03-2005.

Ex W-5- True copy of the letter dated 03-10-2006.

Ex W-6- Letter dated 28-04-2006.

Ex W-7- DPE O.M. dated 24-10-1997 (copy).

Ex W-8- Notification dated 30-09-1997 (copy).

Ex W-9- Copy of O.M. Dated 03-10-1997.

Ex W-10-Copy of circular dated 19-08-2008.

नई दिल्ली, 1 नवम्बर, 2012

का.आ.3495.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स इंडियन रेलर अर्थ स्लिमिटेड मणवालकुरिचि के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्सी के पंचाट (संदर्भ संख्या 35/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-2012 को प्राप्त हुआ था।

[सं. एल-29011/1/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 1st November, 2012

S.O. 3495.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 35/2012 of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Rare Earths Ltd (Manavalakurichi) and their workman, which was received by the Central Government on 30.10.2012.

[No. L-29011/1/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, CHENNAI**

Tuesday, the 18th September, 2012

Present : A.N. JANARDANAN, Presiding Officer
Industrial Dispute No. 35/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Rare Earths Ltd. and their Workmen)

BETWEEN

The General Secretary1st Party/Petitioner Union
Minerals Workers Union (INTUC)
IRE Campus, Indian Rare Earths Ltd.
Manavalarichi Post, Kanyakumari
Distt.-629252

Vs.

The Head2nd Party/Respondent

